

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

GWYNETH GILBERT and MICHAEL
MARTE, on behalf of themselves
and the Putative Class,
Plaintiffs,

v.

LANDS' END, INC.,
Defendant.

Civil Action No. 3:19-cv-00823-jdp

STEPHANIE ANDREWS, et al. on behalf of
themselves and all others similarly situated,
Plaintiffs,

v.

LANDS' END, INC. and LANDS' END
OUTFITTERS, INC.
Defendants.

Civil Action No. 3:19-cv-01066-jdp

**DEFENDANT LANDS' END INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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I. INTRODUCTION

None of the 603 individual Plaintiffs remaining in this case can prove that their supposed personal injuries were caused by a defect in the Lands' End, Inc. ("Lands' End") garments they wore as part of their Delta Air Lines, Inc. ("Delta") uniform. In order for those personal injury claims to withstand summary judgment, each Plaintiff must put forward admissible evidence that the uniforms were defective. And each Plaintiff must put forth evidence sufficient to establish causation, both general (evidence that a defect in the Lands' End uniforms was capable of causing the alleged injuries) and specific (evidence that such a defect in fact caused each Plaintiff's alleged injuries). No Plaintiff can provide admissible evidence as to a defect capable of causing the alleged injuries, general causation, or specific causation and Lands' End is therefore entitled to summary judgment on all Plaintiffs' personal injury claims.

As to defect, Plaintiffs and their experts rely on textile testing performed by third-party laboratories purportedly showing various levels of chemicals and heavy metals present in some (but not all) garments. But none of the experts opine that those levels rendered the garments defective for purposes of any personal injury claims. Plaintiffs' only textile expert, Dr. Peter Hauser, limited his opinions to the supposed defect in the manufacturing process that resulted in crocking (dye transfer), and was clear that he was not providing testimony relating to any medical issues or personal injury claims.

Ham-handedly, Plaintiffs then attempt to avoid their burden on causation by submitting expert reports pointing to discrete pieces of evidence and hoping that the number of personal injury claims filed together in one action will paper over the many cracks in their analyses. Plaintiffs' case is premised on the following shaky logic: (1) that a handful of garment testing results show certain substances present in some tested uniform pieces (and even while other testing results do not), (2) those detected substances have known health effects, and thus, (3) all of the Plaintiffs'

alleged injuries, across some 41 different alleged symptoms, must have been caused by the uniforms.

But notwithstanding that 603 Plaintiffs have joined their cases into one complaint, collective causation evidence will not suffice. These are still separate cases, and to bring her claim before a factfinder, each Plaintiff must have evidence that a defect in her uniform more likely than not caused her alleged injuries. And the Court may not simply take each Plaintiff at her word. Every jurisdiction requires that a plaintiff pursuing a personal injury claim put forward admissible expert testimony to meet her causation burden. For the reasons explained in Lands' End's Motions to Exclude Drs. Apple, Freeman, and Scheinman (filed concurrently with this Motion), *see* Dkt. Nos. 180, 183, 188, Plaintiffs' expert opinions do not rely upon any reliable or scientifically valid methodology that could provide the necessary admissible evidence that a defect in the Lands' End uniforms was capable of causing Plaintiffs' alleged injuries. As a result, no Plaintiff can carry her burden on general causation.

Further, even if Plaintiffs' experts could establish that some defects in the Lands' End uniforms were *capable* of causing Plaintiffs' alleged injuries, the vast majority of the Plaintiffs also lack the necessary expert testimony to prove that the Lands' End uniform was, in fact, the specific cause of their alleged injuries. Plaintiffs attempt to present specific causation testimony through various avenues, but all are fraught with difficulties. Of the 603 Plaintiffs:

- 174 of them disclosed Rule 26(a)(2)(C) treating physicians who will supposedly offer specific causation evidence, but many of those disclosures must be excluded. *See* Lands' End, Inc.'s Memorandum of Law in Support of Motion to Exclude Testimony of Plaintiffs' Rule 26(a)(2)(C) Experts (Dkt. No. 192). If that motion is granted, then 79 of those 174 actually have no treating physician testimony.

- 429 Plaintiffs did not disclose *any* treating physician opinion testimony, and therefore must rely on Plaintiffs' retained experts, as do the 79 Plaintiffs mentioned above whose treating physician disclosures should be excluded.
- Of those 429 Plaintiffs (plus the 79 Plaintiffs with deficient disclosures),
 - Drs. Apple and Scheinman purport to offer blanket specific causation opinions on behalf of all plaintiffs, but for the reasons explained in Lands' End's Motions to Exclude, those opinions should be excluded. *See* Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Fred Apple, Ph.D. (Dkt. No. 184); Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Pamela Scheinman, M.D. (Dkt No. 189).¹
 - Dr. Freeman purports to offer a specific causation opinion for 276 Plaintiffs, but those opinions should be excluded as well, for the reasons explained in Lands' End, Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Michael Freeman, Ph.D. *See* Dkt. No. 181.
- Accordingly, only 95 Plaintiffs have potentially admissible specific causation testimony, and even for those 95 Plaintiffs, Lands' End is entitled to summary judgment on personal injury claims because those Plaintiffs cannot establish a defect and lack evidence of general causation.

Finally, there are three Plaintiffs for whom Lands' End is entitled to summary judgment on their personal injury claims for the independent reason that an administrative law judge has

¹ Drs. Apple and Scheinman did review partial medical records for approximately 30 Plaintiffs, but even those opinions should be excluded. *Id.*

determined that their work uniforms were not the cause of their injuries in workers' compensation proceedings. Plaintiffs whose claims were denied by a state administrative law judge for lack of causation should be precluded from litigating the issue of causation again in this matter. Because a state administrative law judge has already determined, after affording Plaintiffs a full and fair opportunity to contest the issue, that the Lands' End uniform did not cause Plaintiffs' alleged symptoms, Plaintiffs are barred from re-litigating causation under the doctrine of issue preclusion.

Because Plaintiffs cannot prove that the Lands' End uniforms or any component of them could or did cause each Plaintiff's personal injury and certain Plaintiffs have already fully (but unsuccessfully) litigated causation, Lands' End is entitled to summary judgment as to all Plaintiffs' personal injury claims.²

II. BACKGROUND

A. The Development and Launch of the Delta Uniforms

On October 14, 2016, Lands' End entered into a Uniform Apparel Agreement ("Agreement") with Delta Air Lines, Inc. ("Delta") to manufacture uniforms for certain groups of Delta employees. *See* Dkt. No. 60-1, Agreement. Lands' End conducted extensive development and production testing for the Delta uniform, as it does with all of its products. *See* Dkt. No. 59 ("Perrotti Dep."), at 6:7–8:18. Lands' End contracted with multiple factories in Asia and Europe to manufacture the Delta uniform, a common practice for Lands' End and other American clothing

² As this Court recently ruled (Dkt. No. 165), there are genuine factual disputes as to crocking and potential damage to property it may have caused. Lands' End is therefore not seeking summary judgment on Plaintiffs' crocking claims at this time. Lands' End seeks summary judgment on all eight counts in Plaintiffs' Complaint to the extent those claims are premised on personal injury. *See* Dkt. No. 48. Consistent with the operative Scheduling Order, Dkt. No. 117, this Motion for Partial Summary Judgment only addresses issues common to groups of Plaintiffs. Lands' End reserves the right to make additional summary judgment arguments as to each individual Plaintiff at the appropriate time.

manufacturers. *See id.* at 6:17–18, 99:14–18. Lands’ End took numerous steps to ensure that those factories’ processes met Lands’ End’s safety, social, quality, and technical compliance standards. *See id.* at 7:10–8:18.

Lands’ End also engaged several accredited third-party testing agencies to test, inspect, and certify the Delta uniform prior to and during production: Bureau Veritas, Asian Inspection, Intertek Group Plc, and SGS S.A. *See id.* at 69:2–20. Lands’ End worked with those agencies to test, monitor, and audit the various stages of manufacturing the Delta uniform items to ensure the uniforms were produced according to Lands’ End’s safety, quality, and technical compliance standards. *See id.* at 69:2–70:2, 75:12–76:7.

Pursuant to the terms of the Agreement, Lands’ End oversaw the manufacture of the Delta uniform garments to meet Delta’s design and performance specifications. *See* Agreement at Ex. H. Specifically, Delta required that Lands’ End use a number of performance finishes³ on the Delta uniform. *See* Dkt. No. 60-2 (“Delta Finishes Testing Report”). All of the performance finishes used on the Delta uniform meet regulatory standards and Lands’ End’s own safety and technical standards, and are used alone or in combination on other Lands’ End products. *See id.*

Over 1,000 Delta employees “wear tested” the Delta uniform before Delta introduced it company-wide. *See* Agreement § 3. The “wear test” cohort included Delta employees from all uniformed divisions, and encompassed employees with different job requirements, work climates, and work conditions. *See* Dkt. No. 80-5 (“Leader Talking Points Email”) at DELTA_00016053. “Wear testers” wore the Delta uniform from December 2016 to March 2017 and none reported

³ Performance finishes are “standard treatments used by Lands’ End across their entire clothing line.” Performance finishes, for example, “impart stain/wrinkle resistance and antimicrobial properties.” *See* Dkt. No. 60-2, Delta Finishes Allergy Screening Report at 1. The various Delta Uniform garments had different performance finishes applied to them as Delta specified. *See* Agreement at Exs. H, I.

that the Delta uniform crocked or caused adverse physical reactions. *See* Dkt. No. 60-9 (“National Institute for Occupational Health June 26, 2019 Letter”) at 2. The “wear test” uniforms were manufactured to the same specifications of the full uniform line, as required in the Agreement. *See* Agreement § 3.K.

B. The Launch of the Delta Uniforms and Lands’ End’s Response to a Small Number of Complaints

The Delta uniform formally launched on May 28, 2018, on which date Delta began requiring approximately 64,000 employees to wear the Delta uniform when working. Dkt. No. 129, Pls.’ Proposed Findings of Fact, ¶ 9. After the launch, Delta and Lands’ End began receiving a small number of complaints about the Delta uniform that fell into two categories: issues of crocking (or dye transfer) and alleged physical reactions. *See* Dkt No. 139, Def.’s SOF, ¶ 5. For Delta Employees who contacted Lands’ End or Delta and reported experiencing alleged physical reactions to the Delta uniform, Lands’ End developed alternative uniform items. *See* Dkt. No. 58 (“Sersch Dep.”) at 74:25–75:5, 76:13–25, 80:22–81:7. Those alternatives were made from different fabrics and without certain potential allergens (such as non-wool garments), and additional options that were not treated with the performance treatments and finishes (referred to as the “untreated” garments). *Id.* After each employee obtained Delta’s approval, Lands’ End sent those alternatives to Delta employees at no cost. *Id.* Many Plaintiffs reported that these “untreated” garments did not affect their symptoms. Lands’ End conducted extensive testing to try to determine the root cause of the reported physical reactions. *See* Perrotti Dep. at 89:14–90:11. Lands’ End was unable to find any identifiable cause common to all complaints. *Id.* Delta also attempted to determine a cause, and hired Intertox, an independent testing agency, to do so. *Id.* at 58:10-13, 60:12-14. Intertox conducted extensive testing and issued a comprehensive report, made available to all Delta employees, that was also unable to find any identifiable cause. *See*

Dkt. No. 89 (“Abukhdeir Dep.”) at 96:17–97:5; Dkt. No. 92 (“Johnson Dep.”) at 84:20–24. In an abundance of caution, Delta discontinued the uniform line apron because of PFAS testing results, even though the levels of PFAS detected were below textile industry limit values. *See* Perrotti Dep. at 62:18–63:2; Johnson Dep. at 84:20–24.

Although no testing established that the Delta uniform caused any adverse physical reactions, for employees who nonetheless continued to complain of physical reactions after switching to the alternative fabrics and untreated Lands’ End garments (through the process described above), Delta made additional accommodations. Beginning in the fall of 2018, Delta allowed that limited group of employees to wear a “black and white” uniform comprised of clothing items the employee purchased herself from any source and for which Delta reimbursed the cost up to a maximum of \$510. *See* Dkt. No. 80-7 (“Black and White Uniform Policy”) at DELTA_00003472; Johnson Dep. at 72:13–23, 92:12–94:16, 98:11–99:12. A few months later, by mid-March 2019, Delta implemented a policy that allowed employees who filed and were approved for an on-the-job injury claim to wear the black and white alternative uniform. *Id.* Delta offered back-pay to some employees who missed work shifts for associated doctor’s appointments or while seeking approval to wear the “black and white” uniform.⁴ *See* Dkt. No. 84 (“Valdez Dep.”) at 82:15–83:2; Dkt. No. 88 (“Andrews Dep.”) at 135:5–8. In June 2019, Delta relaxed its policy to allow employees to wear black and white while their on-the-job injury claim was processing. *See* Johnson Dep. at 92:12–94:16. Delta later relaxed that requirement even further,

⁴ In addition to back pay, Delta offered some employees a stipend of up to \$5,000 for medical cost and travel to receive treatment at a number of renowned medical facilities, such as the Mayo Clinic. *See, e.g.,* Valdez Dep. at 118:13–119:16; Dkt. No. 87 (“Warner Dep.”) at 180:16–181:6; Andrews Dep. at 159:13–161:7. A number of Delta employees also filed workers’ compensation claims, from which the majority of medical costs were covered or a settlement paid. *See* Abukhdeir Dep. at 84:9–22; Dkt. No. 86 (“Smith Dep.”) at 71:21–72:8.

and, as of late 2019, allowed any employee to wear a “black and white” uniform upon request. *See id.* Complaints were not widespread among Delta employees, and after the Delta uniform had been in service for nearly ten months, fewer than one percent of all Delta flight attendants had reported allergic reactions, skin irritation, or dye transfer allegedly caused by the Delta uniform. Leader Talking Points Email at DELTA_00016051. By late 2019, approximately 800 employees had requested to wear black and white. *See Johnson Dep.* at 22:18–23:4.

C. Procedural Background

On October 3, 2019, Plaintiffs Gwyneth Gilbert and Michael Marte filed in this Court their complaint on behalf of themselves and a proposed nationwide class. *Gilbert v. Lands’ End*, No. 19-cv-823, Dkt. No. 1. On December 31, 2019, 525 named Plaintiffs filed in this Court a different lawsuit alleging injuries from the Delta uniform on behalf of themselves and a proposed nationwide class. *Andrews v. Lands’ End*, No. 19-cv-1066. Although their allegations were nearly identical to the *Gilbert* Plaintiffs, the *Andrews* Plaintiffs also sought compensatory damages for the individually named Plaintiffs, as well as medical monitoring and injunctive relief on behalf of the proposed class.

After this Court consolidated the *Gilbert* and *Andrews* matters, Plaintiffs pursued relief on behalf of a proposed nationwide class, and also sought compensatory damages on an individual basis for alleged personal injuries. *See* Dkt. No. 48. Currently there are 603 individual Plaintiffs. *See* Dkt. No. 48, Ex. 1; Dkt. Nos. 97, 115, 153, 166.

This Court denied Plaintiffs’ Motion for Class Certification on August 18, 2021. *See* Dkt. No. 165. As a result, this matter now comprises 603 individual cases consolidated before this Court. Defendant Lands’ End, Inc.’s Statement of Proposed Findings of Fact in Support of its Motion for Partial Summary Judgment (“Proposed Findings of Fact”) ¶ 6. Plaintiffs allege that various garments in their work uniform line, manufactured by Lands’ End, caused some variety

of: rashes, itching, skin irritation, blisters, hair loss, reactive airway disease, asthma, lung congestion, shortness of breath, breathing difficulties, dyspnea, excess coughing, nose congestion, sore throat, trouble swallowing, ringing in ears vocal cord dysfunction, sinus irritations, swollen glands, gum bleeding, burning eyes, watery eyes, fatigue, insomnia, anxiety, emotional distress, fuzzy memory, blurred vision, muscle weakness, joint swelling, joint pain, tingling in limbs, tremors, headaches, dizziness, stomach pain, nausea, diarrhea, kidney pain, bloody urine, increased heart rate, and high blood pressure.

D. Plaintiffs' Expert Reports

In an attempt to meet their burden to prove causation, Plaintiffs disclosed three experts: Dr. Michael Freeman, an epidemiologist, Dr. Fred Apple, a toxicologist, and Dr. Pamela Scheinman, a dermatologist.⁵ Proposed Findings of Fact ¶ 7. As explained in Lands' End's accompanying Motions to Exclude those experts, Dkt. Nos. 180, 183, 188, each purported expert relied on limited and/or unreliable data that Plaintiffs' counsel selectively chose, failed to provide scientific evidence showing statistical associations (much less causal connections) between any adverse human health effects and exposure to any substances found in the uniforms, and used flawed methodologies in their analyses. Even though all of Plaintiffs' alleged symptoms have myriad potential causes and frequently occur among flight attendants in general, Plaintiffs' experts

⁵ Plaintiffs disclosed an additional expert, Dr. Peter Hauser, who opined on issues of textile chemistry and crocking. *See* Dkt. No. 177, Third Amended Rule 26 Report of Peter J. Hauser, Ph.D ("Hauser Report") at 5-6. Dr. Hauser does not proffer any opinions on medical issues. Dkt. No. 171, Deposition of Peter Hauser, Ph.D., March 12, 2021 ("Hauser Dep.") at 220:17– 221:3, 308:16-18 ("I am not making any statements or implying anything about health."). Dr. Hauser's opinions are not relevant to Lands' End's Motion for Partial Summary Judgment, and as a result, Lands' End does not challenge his opinions at this time. Lands' End reserves its right to challenge Dr. Hauser's opinions at a later phase of the case.

failed to consider any alternative causes for Plaintiffs' alleged symptoms. Further, none of those experts opined that there was a defect in the uniforms.⁶

Perhaps recognizing their Rule 26(a)(2)(B) experts fail to establish specific causation, 174 Plaintiffs made treating physician disclosures pursuant to Rule 26(a)(2)(C). Proposed Findings of Fact, ¶ 11. As explained in Lands' End's accompanying Memorandum in Support of Motion to Exclude Treating Physician Disclosures, Dkt. No. 192, many of those disclosures fail to provide sufficient causation opinions and should be excluded.

III. CHOICE OF LAW

This Court has jurisdiction over this case on the basis of diversity. As such, federal procedural law and state substantive law apply. *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 754–55 (7th Cir. 2004) (stating that the Federal Rules of Civil Procedure govern whether expert testimony was properly excluded, but using state law to determine whether the lack of expert medical testimony defeated plaintiff's claims). Plaintiffs filed this action in Wisconsin, where Lands' End is headquartered, but Plaintiffs are domiciled, were allegedly injured, or were treated in roughly 40 different jurisdictions in the United States.⁷ Fortunately, every United States jurisdiction requires expert evidence of both general and specific causation in a complex medical causation case in order for a personal injury claim to survive summary judgment. *See, e.g., In re Mirena IUS Levonorgestrel-Related Prods. Liab. Litig. (No. II)*, 387 F. Supp. 3d 323, 337 (S.D.N.Y. 2019), *aff'd*, 982 F.3d 113 (2d Cir. 2020) (“[A]ll [55 different jurisdictions, including

⁶ Dr. Hauser, Plaintiffs' textile expert, testified that the crocking and bleeding from the uniforms was defective as a result of a failure to afterwash or scour the uniforms, but as mentioned, he was explicit that his opinions were not related to any potential medical issues. Hauser Report at 5-6; Hauser Dep. at 220:17–221:3, 308:16-18.

⁷ Proposed Findings of Fact, ¶¶ 3-4.

all 50 states] require some evidence of general causation.”).⁸ Thus, the outcome is the same regardless of which state’s substantive law applies to each personal injury claim. *Lands’ End* is

⁸ See, e.g., *McClain v. Metabolife Int’l, Inc.*, 401 F.3d 1233, 1239 (11th Cir. 2005) (Alabama); *Baker v. Baker Hughes Oilfield Operations, Inc.*, 2018 WL 3625834, at *5 (D. Alaska July 30, 2018) (Alaska); *Cloud v. Pfizer Inc.*, 198 F. Supp. 2d 1118, 1132 (D. Ariz. 2001) (Arizona); *Nat’l Bank of Commerce v. Associated Milk Producers, Inc.*, 22 F. Supp. 2d 942, 949 (E.D. Ark. 1998), *aff’d sub nom. Nat’l Bank of Commerce of El Dorado v. Associated Milk Producers, Inc.*, 191 F.3d 858 (8th Cir. 1999) (Arkansas); *Nelson v. Matrixx Initiatives, Inc.*, 592 F. App’x 591, 592 (9th Cir. 2015) (California); *Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 886 (10th Cir. 2005) (Colorado); *Beyer v. Anchor Insulation Co.*, 238 F. Supp. 3d 270, 294 (D. Conn. 2017) (Connecticut); *Scaife v. Astrazeneca LP*, 2009 WL 1610575, at *20 (Del. Super. June 9, 2009) (Delaware); *Arias v. DynCorp*, 928 F. Supp. 2d 1, 6, 9 (D.D.C. 2013), *aff’d*, 752 F.3d 1011 (D.C. Cir. 2014) (District of Columbia); *In re Trasylol Prods. Liab. Litig.*, Nos. MDL-1928, 08-MD-1928, 2013 WL 1192300, at *5 (S.D. Fla. Mar. 22, 2013) (Florida); *Siharath v. Sandoz Pharm. Corp.*, 131 F. Supp. 2d 1347, 1352 (N.D. Ga. 2001), *aff’d*, *Rider v. Sandoz Pharm. Corp.*, 295 F.3d 1194 (11th Cir. 2002) (Georgia); *Forsyth v. Eli Lilly & Co.*, No. CIV. 95-00185 ACK, 1998 WL 35152135, at *8 (D. Haw. Jan. 5, 1998) (Hawaii); *Earl v. Cryovac, A Div. of W.R. Grace Co.*, 772 P.2d 725, 726 (Idaho Ct. App. 1989) (Idaho); *Lewis v. PDV Am., Inc.*, 532 F. Supp. 2d 1006, 1010 (N.D. Ill. 2008), *aff’d*, *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698 (7th Cir. 2009) (Illinois); *C.W. ex rel. Wood v. Textron, Inc.*, 807 F.3d 827, 838 (7th Cir. 2015) (Indiana); *Ranes v. Adams Labs., Inc.*, 778 N.W.2d 677, 688 (Iowa 2010) (Iowa); *Vanderwerf v. SmithKlineBeecham Corp.*, 529 F. Supp. 2d 1294, 1306 (D. Kan. 2008) (Kansas); *Hans v. Matrixx Initiatives, Inc.*, 2007 WL 2668594, at *3 (W.D. Ky. Sept. 6, 2007) (Kentucky); *Burst v. Shell Oil Co.*, 2014 WL 3893304, at *2 (E.D. La. Aug. 8, 2014) (Louisiana); *Millett v. Atl. Richfield Co.*, 2000 WL 359979, at *13 (Super. Ct. Maine Mar. 2, 2000) (Maine); *Sugarman v. Liles*, 190 A.3d 344, 353–54 (Ct. App. Md. 2018) (Maryland); *Milward v. Rust-Oleum Corp.*, 820 F.3d 469, 476 (1st Cir. 2016) (Massachusetts); *Schaendorf v. Consumers Energy Co.*, 2009 WL 563904, at *8 (Mich. Ct. App. Mar. 5, 2009) (Michigan); *In re Viagra Prods. Liab. Litig.*, 658 F. Supp. 2d 950, 968 (D. Minn. 2009) (Minnesota); *Watts v. Radiator Specialty Co.*, 990 So. 2d 143, 151 (Miss. 2008) (Mississippi); *Glastetter v. Novartis Pharm. Corp.*, 107 F. Supp. 2d 1015, 1045 (E.D. Mo. 2000), *aff’d*, 252 F.3d 986 (8th Cir. 2001) (Missouri); *Brumbaugh v. Sandoz Pharm. Corp.*, 77 F. Supp. 2d 1153, 1155 n.1 (D. Mont. 1999) (Montana); *Barrett v. Rhodia, Inc.*, 606 F.3d 975, 984 (8th Cir. 2010) (Nebraska); *Jernee v. Kennametal, Inc.*, 2015 WL 134767, at *1 (Nev. Jan. 8, 2015) (Nevada); *Grimes v. Hoffmann-LaRoche, Inc.*, 907 F. Supp. 33, 35 (D.N.H. 1995) (New Hampshire); *In re Phenylpropanolamine (PPA)*, 2003 WL 22417238, at *20 (N.J. Super. Ct. Law Div. July 21, 2003) (New Jersey); *Firstenberg v. Monribot*, 350 P.3d 1205, 1212 (N.M. Ct. App. 2015) (New Mexico); *Amorgianos v. Nat’l R.R. Passenger Corp.*, 303 F.3d 256, 268 (2d Cir. 2002) (New York); *Dunn v. Sandoz Pharm. Corp.*, 275 F. Supp. 2d 672, 676 (M.D.N.C. 2003) (North Carolina); *Anderson v. Hess Corp.*, 592 F. Supp. 2d 1174, 1178 (D.N.D. 2009) (North Dakota); *Valentine v. PPG Indus., Inc.*, 821 N.E.2d 580, 588 (Ohio Ct. App. 2004), *aff’d sub nom. Valentine v. Conrad*, 850 N.E.2d 683 (Ohio 2006) (Ohio); *Hollander v. Sandoz Pharm. Corp.*, 289 F.3d 1193, 1214 (10th Cir. 2002) (Oklahoma); *Phelps v. Wyeth, Inc.*, 938 F. Supp. 2d 1055, 1068

entitled to summary judgment on all personal injury claims in this case because, as detailed below, no Plaintiff has put forth any evidence to establish general or specific causation for her alleged injury.

IV. ARGUMENT

A. Each Individual Claim Maintains a “Separate Identity,” And Each Plaintiff Will Have to Prove Each Element of Her Case at Trial

At trial, each and every Plaintiff in this case will have to prove: (1) that there was a substance or combination of substances in their uniform items over some threshold level, (2) that rendered the garment defective, (3) that was capable of causing their alleged personal injuries, and (4) that did in fact cause those alleged injuries. Though Plaintiffs’ individual claims were consolidated for pretrial efficiencies in a fashion similar to multidistrict litigation, the purpose of joinder is not to relieve from each plaintiff her burden to prove each element of her claim. *See Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000) (permissive joinder does “not [] merge the plaintiffs’ rights so that the defendant loses defenses that he might have had against one of the plaintiffs”); *see also In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 592 (6th Cir.

(D. Or. 2013) (Oregon); *Soldo v. Sandoz Pharm. Corp.*, 244 F. Supp. 2d 434, 524–25 (W.D. Pa. 2003) (Pennsylvania); *Velazquez v. Abbott Labs.*, 901 F. Supp. 2d 279, 293 (D.P.R. 2012) (Puerto Rico); *Mills v. State Sales, Inc.*, 824 A.2d 461, 468 (R.I. 2003) (Rhode Island); *In re Bausch & Lomb Inc. Contacts Lens Sol. Prods. Liab. Litig.*, 693 F. Supp. 2d 515, 518 (D.S.C. 2010), *aff’d*, *Fernandez-Pineiro v. Bausch & Lomb, Inc.*, 429 F. App’x 249 (4th Cir. 2011) (South Carolina); *Garrido v. Team Auto Sales, Inc.*, 913 N.W.2d 95 (S.D. 2018) (South Dakota); *Alcoa, Inc. v. McCroskey*, 2018 WL 5619688, at *2 n.2 (Tenn. Workers Comp. Panel Oct. 30, 2018) (Tennessee); *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 714, 730 (Tex. 1997) (Texas); *Shipley v. Forest Labs., Inc.*, 2015 WL 4199739, at *4 (D. Utah July 13, 2015) (Utah); *Blanchard v. Eli Lilly & Co.*, 207 F. Supp. 2d 308, 314, 322 (D. Vt. 2002) (Vermont); *Zellars v. NexTech Ne., LLC*, 895 F. Supp. 2d 734, 739 (E.D. Va. 2012), *aff’d*, 533 F. App’x 192 (4th Cir. 2013) (Virginia); *Henricksen v. ConocoPhillips Co.*, 605 F. Supp. 2d 1142, 1177 (E.D. Wash. 2009) (Washington); *Meade v. Parsley*, No. 2:09-CV-00388, 2010 WL 4909435, at *5 n.5 (S.D. W. Va. Nov. 24, 2010) (West Virginia); *Schultz v. Glidden Co.*, No. 08-C-919, 2012 WL 968005, at *2 (E.D. Wis. Mar. 21, 2012), *aff’d in part, rev’d in part on other grounds sub nom. Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426 (7th Cir. 2013) (Wisconsin); *Estates of Tobin by Tobin v. SmithKline Beecham Pharm.*, 164 F. Supp. 2d 1278, 1287 (D. Wyo. 2001) (Wyoming).

2013) (stating in MDL context, “[w]hen the pretrial phase ends and cases not yet terminated return to their originating courts for trial, the plaintiffs’ actions resume their separate identities.”). With their expert reports, Plaintiffs attempt to ignore this basic principle of joinder and merge their claims, opining on generalities, rather than putting forth admissible evidence of causation for each Plaintiff. Plaintiffs’ experts opine that there were some substances present in some tests on some uniform garments (while ignoring that those same substances were often *not* present in other testing), and those substances can cause health effects. From that rickety foundation, Plaintiffs’ experts attempt to conclude that all of Plaintiffs’ alleged health symptoms were in fact caused by the uniforms. But in doing so, Plaintiffs’ experts skip necessary steps in the analysis and use unreliable data, rendering those opinions useless to a jury and inadmissible. *See generally* Def.’s Memoranda in Support of Motions to Exclude Drs. Apple, Freeman, and Scheinman, Dkt. Nos. 181, 184, 189, (outlining flaws in each purported expert’s methodology and analysis). None of Plaintiffs’ experts can reliably link substances found in the garments to Plaintiffs’ injuries. *See id.* And none of Plaintiffs’ experts opine that a defect in the uniform is capable of causing Plaintiffs’ injuries.⁹ *See id.* As detailed below, because Plaintiffs have no admissible expert evidence to establish that the alleged defect could cause the alleged injuries, Plaintiffs cannot establish general or specific causation and this Court should grant Lands’ End’s motion for partial summary judgment as to Plaintiffs’ personal injury claims.

⁹ As mentioned, Dr. Hauser opines that crocking and bleeding was caused by defective afterwashing and/or scouring of the uniforms. As explained below, Plaintiffs’ experts only allege that this defect was capable of causing property damage, not personal injury.

B. Plaintiffs' Claims Fail Because Their Experts Failed to Identify a Defect Capable of Causing Personal Injury

To prove necessary elements of each personal injury case, Plaintiffs' experts must establish a causal connection between (1) a defect and (2) each Plaintiff's alleged injuries. *See, e.g.*, 63 Am. Jur. 2d Products Liability § 531 ("The chief elements which a plaintiff must prove in a case involving strict liability in tort are: (1) the defective and (according to most authorities) unreasonably dangerous condition of the defendant's product; and (2) a causal connection between such condition and the plaintiff's injuries or damages."); W. Page Keeton et al., *Prosser and Keeton on Torts* § 102, at 710-11 (5th ed. 1984) ("Product defect under strict liability must be a proximate cause of claimant's injury."); *Kosmyinka v. Polaris Indus., Inc.*, 462 F.3d 74, 86 (2d Cir. 2006) (explaining that under New York law, "[i]t is well settled that [] whether [an] action is pleaded in strict products liability ... or negligence, it is a consumer's burden to show that *a defect* in the product was a substantial factor in causing the injury"); *Murray v. Fairbanks Morse*, 610 F.2d 149, 154 (3d Cir. 1979) ("In a traditional strict products liability action brought under Restatement (Second) of Torts, § 402A, the plaintiff need prove only three elements to recover: (1) the existence of a defect, (2) in an unreasonable dangerous condition, (3) which proximately causes the injury."); *Ford Motor Co. v. Rushford*, 868 N.E.2d 806, 810 (Ind. 2007) ("[W]ith respect to strict liability actions, the plaintiff must prove that: (1) the product was defective and unreasonably dangerous; (2) the defective condition existed at the time the product left the defendant's control; and (3) the defective condition was the proximate cause of the plaintiff's injuries.").

Only Dr. Hauser, Plaintiffs' textile expert, testified as to any alleged defect in the uniform, identifying a failure to afterwash or scour as the defect, but that supposed defect did not relate to potential toxins capable of causing personal injury. Hauser Report at 5-6; Hauser Dep. at 220:17–221:8. Dr. Hauser's opinion was limited to the *property damage* caused by crocking or dye

transfer. Dr. Hauser was clear that he was not providing any testimony connecting crocking to any claimed personal injuries. *Id.* Plaintiffs' other experts, Drs. Apple, Freeman, and Scheinman, do not themselves identify a defect in the uniforms. Thus, Plaintiffs have no expert evidence of a defect that is connected to their alleged personal injuries. At best, Drs. Apple, Freeman, and Scheinman cite results of laboratory testing on some garments, some of which allegedly showed substances at "elevated" levels or levels exceeding certain industry limit values. The experts did not personally conduct any of the testing, however. The lab results that the experts rely on do not draw conclusions about or even discuss a defect; they report levels of various substances. *See, e.g.*, Dkt. Nos. 56-11, 56-12, 56-13, 56-15, 69 (Ex. A). Plaintiffs needed to (but did not) put forward an expert witness to interpret those laboratory testing results to assist the fact finder in determining what, if anything, is problematic in the garments, and thus defective. Critically, none of Plaintiffs' experts opine that the mere presence of the substances in the uniforms rendered them defective, or at what levels of those substances the uniforms would render the garments defective. In fact, Dr. Hauser testified that many of the substances that Plaintiffs' other experts allege were potentially harmful, though not defective (fluorine, magnesium, silicon, and sodium), are normal in garments or were found in very low levels which were not concerning to him. Hauser Dep. at 266:18–267:17, 268:22–269:15, 277:20–278:2. Even if any individual Plaintiffs were later to conduct additional testing on their own uniforms, those Plaintiffs would lack the necessary expert testimony showing what level of any substance renders a garment defective. Plaintiffs will bear the burden at trial of establishing a *defect* capable of causing their alleged injuries, an essential element of their case, and are incapable of doing so. There is no evidence of a defect associated with Plaintiffs' personal injuries (as opposed to property damage). Lands' End is entitled to partial summary judgment as a result. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322, (1986)

(Summary judgment must be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”).

C. Plaintiffs’ Cannot Establish General Causation for Their Personal Injury Claims, and Lands’ End is Entitled to Summary Judgment as a Result

1. Plaintiffs Require Expert Testimony on General Causation Because Their Complex Medical Causation Theory is Beyond the Understanding of a Lay Person.

Lands’ End is also entitled to partial summary judgment on all of Plaintiffs’ remaining personal injury claims because Plaintiffs’ experts have failed to provide admissible evidence of general causation showing that the Delta uniforms are even capable of causing the alleged injuries. “General causation is whether a substance is capable of causing a particular injury or condition in the general population, while specific causation is whether a substance caused a particular individual’s injury.” *Wells v. SmithKline Beecham Corp.*, 601 F.3d 375, 378 (5th Cir. 2010) (quotation omitted). “[A] plaintiff must establish general causation before moving to specific causation.” *Id.* In all of the various jurisdictions where Plaintiffs reside, a plaintiff must establish both general and specific causation in products liability cases involving medical causation issues. *See, e.g., In re Mirena*, 387 F. Supp. 3d at 337 (“[A]ll [55 different jurisdictions, including all 50 states] require some evidence of general causation.”).¹⁰ Likewise, in each jurisdiction expert testimony on causation is necessary in all “[p]ersonal injury cases involving pharmaceuticals, toxins or medical devices [that] involve complex questions of medical causation beyond the understanding of a lay person.” *In re Baycol Prods. Litig.*, 321 F. Supp. 2d 1118, 1126 (D. Minn. 2004); *see also Wills v. Amerada Hess Corp.*, 379 F.3d 32, 46 (2d Cir. 2004); *Truck Ins. Exch. v. MagneTek, Inc.*, 360 F.3d 1206, 1214 (10th Cir. 2004); *Green v. Ensign-Brickford Co.*,

¹⁰ *See* footnote 6, *supra*.

595 A.2d 1383, 1388 (Conn. 1991); *Waller v. Indus. Comm'n*, 406 P.2d 197, 200 (Ariz. 1965); *Stephen v. Ford Motor Co.*, 37 Cal. Rptr. 3d 9, 17 (Cal. Ct. App. 2005).

Despite Plaintiffs' efforts to paint a picture in broad strokes, each Plaintiff's personal injury claim is exceedingly complex. Collectively, the 603 Plaintiffs allege that some (but perhaps not all) of the garments in the uniform line contained varying substances, including fluorine, sodium, magnesium, silicon, silicone, chromium, bromine, barium, nickel, antimony, mercury, and/or formaldehyde which, acting either alone or in relation to other substances, were either absorbed dermally or inhaled, and caused numerous unrelated ailments: rashes, blisters, hair loss, reactive airway disease, asthma, lung congestion, shortness of breath, dyspnea, excess coughing, congestion, sore throat, trouble swallowing, ringing in ears, vocal cord dysfunction, sinus irritations, swollen glands, gum bleeding, eye irritation, blurred vision, fatigue, insomnia, anxiety, memory loss, muscle weakness, joint swelling, joint pain, tingling in limbs, tremors, headaches, dizziness, stomach pain, nausea, diarrhea, kidney pain, bloody urine, increased heart rate, and high blood pressure. Such a complicated set of variables with potential but unclear causal relationships is beyond the knowledge of the lay juror and requires admissible expert testimony under the law of each Plaintiff's domicile.

2. Plaintiffs Have No Admissible Expert Testimony on General Causation

Here, Plaintiffs lack any such testimony on general causation, because the testimony offered by Drs. Apple, Freeman, and Scheinman is based on unreliable data and unsound methodologies, such that the proffered opinions must be excluded for the reasons stated in Lands' End's Motions to Exclude. Each of Plaintiffs' experts fails to establish general causation by a reliable methodology:

- Dr. Apple, a toxicologist, relies on textile testing results, commissioned by Plaintiffs' counsel, and partial medical records from 24 Plaintiffs to conclude that

wearing the Lands' End uniforms caused all 1,001 Plaintiffs' 41 different self-reported symptoms.

- Dr. Apple never states *which* substance in the testing results could have caused *which* symptoms, never assesses how much of any substance any Plaintiff was exposed to, ignores basic principles of toxicology like exposure routes, and directly contradicts others like dose response and permissible exposure levels. For additional issues with Dr. Apple's testimony and further explanation, *see* Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Fred Apple, Ph.D., Dkt. No. 184.
- Dr. Freeman, an epidemiologist, uses the questionnaire responses that Plaintiffs prepared as part of this litigation, to conduct a modified Bradford Hill analysis as to general causation.
 - The questionnaire responses, on which Dr. Freeman bases his entire analysis, are unverified, biased, and completely unreliable. Dr. Freeman also applies a version of the Bradford-Hill criteria which he himself modified without any explanation, and that modification has no basis in science or in peer-reviewed literature. For additional issues with Dr. Freeman's testimony and further explanation, *see* Lands' End, Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Michael Freeman, Ph.D., Dkt. No. 181.

- Dr. Scheinman, a dermatologist, also relies on the textile testing results commissioned by Plaintiffs' counsel, as well as partial records from 16 Plaintiffs¹¹ to conclude that the uniforms were the cause of all of Plaintiffs' alleged injuries.
 - Dr. Scheinman made clear in her testimony all of the many steps that a doctor must take to reliably diagnose a patient and determine the cause of that patient's injury, such as reviewing a complete medical history, speaking with the patient, conducting a physical examination, and ruling out alternative causes. Dr. Scheinman took none of those steps here, and instead relied on, at best, partial medical records. For additional issues with Dr. Scheinman's testimony and further explanation, *see* Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Pamela Scheinman, M.D., Dkt. No. 189.

None of Plaintiffs' experts discuss what levels of the various substances Plaintiffs were exposed to or what symptoms those substances could have caused at what levels. At most, Plaintiffs' experts assert, based on limited and inconsistent data, that certain substances were present in certain garment testing results, and then attempt to conclude that *all* Plaintiffs' symptoms necessarily were caused by their various uniform items, without regard to which items Plaintiffs wore or from which symptoms they allegedly suffered. Beyond supposition and surmise, Plaintiffs' experts do not proffer evidence showing that the substances that were purportedly found in certain of the Lands' End uniform garments are capable of causing the alleged symptoms as to all Lands' End uniform garments. Because Plaintiffs' expert reports are not subject to the scientific

¹¹ One of those Plaintiffs has since been dismissed from this action.

method, but are “subjective belief or unsupported speculation,” their opinions must be excluded from this case. *Chapman v. Maytag Corp.*, 297 F.3d 682, 687 (7th Cir. 2002).

Nor can Plaintiffs save their personal injury claims from summary judgment by skipping over general causation and instead relying on just treating physician disclosures purporting to prove specific causation. In every jurisdiction, to succeed on a personal injury claim, a plaintiff must first adduce competent evidence that the product is capable of causing the condition at issue, and may not rely upon purported evidence of specific causation as a substitute for a failure to offer evidence to establish general causation. *In re Mirena*, 387 F. Supp. 3d at 340 (collecting cases); *see, e.g., Norris*, 397 F.3d at 887 (“In concluding that Plaintiff’s systemic injuries were a result of her silicone breast implants, Plaintiff’s experts attempted to demonstrate specific causation without first demonstrating general causation [A]t best, silicone-associated connective tissue disease is an untested hypothesis Therefore, there is no scientific basis for any expert testimony as to its specific presence in Plaintiff.”); *In re Rezulin Prods. Liab. Litig.*, 441 F. Supp. 2d 567, 578 (S.D.N.Y. 2006) (“[E]vidence of specific causation is irrelevant without evidence of general causation.” (citing *Ruggiero v. Warner-Lambert Co.*, 424 F.3d 249, 251 n.1 (2d Cir. 2005))); *Soldo*, 244 F. Supp. 2d at 525 (“If plaintiff has not demonstrated sufficiently reliable evidence of *general* causation, her claims fail and there is no need to consider *specific* causation.”); *In re General Motors LLC Ignition Switch Litig.*, 2017 WL 6729295, at *7 (S.D.N.Y. Dec. 28, 2017) (“[A]bsent admissible evidence ... of general causation[] there is no basis to opine ... [on] specific causation[].”). As a result, Plaintiffs do not have admissible expert testimony regarding general causation and cannot defeat summary judgment on their personal injury claims. *See, e.g., C.W. ex rel. Wood*, 807 F.3d at 838 (“With no experts to prove causation ... the appellants cannot prove their toxic-tort case ... [and] summary judgment was proper.”); *In re Denture Cream Prods. Liab. Litig.*, 204

F. Supp. 3d 1348, 1352 (S.D. Fla. 2016) (“As the Court found the general causation expert reports submitted by the other MDL Plaintiffs inadequate in its *Daubert* Order ... [r]emaining Plaintiffs have failed to prove general causation. Thus, ... summary judgment is appropriate.”); *In re Viagra*, 658 F. Supp. 2d at 956 (“[A]bsent an admissible general causation [expert] opinion, Plaintiffs’ claims necessarily fail and [defendant’s] motion for summary judgment must be granted.”); *In re Rezulin*, 441 F. Supp. 2d at 579 (“[P]laintiffs therefore have failed to provide admissible evidence of general or specific causation of silent liver injury. Without the necessary and admissible expert evidence, there is no genuine issue of material fact as to causation, and summary judgment is appropriate.”).

D. The Vast Majority of Plaintiffs Also Fail to Establish Specific Causation

Even if Plaintiffs had evidence to establish general causation for their alleged personal injuries (which they do not), the vast majority of Plaintiffs also lack admissible evidence of specific causation. To survive summary judgment, each Plaintiff must have evidence that the alleged defect in fact caused her alleged injuries. *Wells*, 601 F.3d at 378 (“[S]pecific causation is whether a substance caused a particular individual’s injury.”). As with general causation, every jurisdiction requires a plaintiff to offer admissible expert testimony regarding specific causation in a complex medical causation case such as this. *See, e.g., Barnes v. Anderson*, 202 F.3d 150, 159 (2d Cir. 1999) (“[E]xpert medical opinion evidence is usually required to show the cause of an injury or disease because the medical effect on the human system of the infliction or injuries is generally not within the sphere of the common knowledge of the lay person.”) (internal alterations and quotation marks omitted); *McClain*, 401 F.3d at 1237 (holding that “[p]laintiffs must prove the toxicity of [a product] and that it had a toxic effect on them causing the injuries that they suffered,” and that “[t]his type of proof requires expert testimony”); *In re Baycol*, 321 F. Supp. 2d at 1126 (“[P]ersonal injury cases involving pharmaceuticals, toxins or medical devices involve complex

questions of medical causation beyond the understanding of a lay person.”); *In re Mirena*, 387 F. Supp. 3d at 342 (“[G]enerally in products liability cases involving complex causation issues, including cases involving pharmaceuticals or medical devices, ‘to establish causation, plaintiffs must offer admissible expert testimony regarding both general causation and specific causation.’” (quoting *Amorgianos*, 303 F.3d at 268)).

There are several ways that each Plaintiff in this action might try to prove specific causation: an opinion from a treating physician pursuant to Rule 26(a)(2)(C), one or more opinions from retained experts, or both.¹² The Court should first assess whether Plaintiffs have expert evidence from treating physicians disclosed pursuant to Rule 26(a)(2)(C), and then consider whether any of Plaintiffs’ retained experts provide admissible evidence of specific causation.¹³

1. Plaintiffs With Rule 26(a)(2)(C) Disclosures from Treating Physicians

There are 174 Plaintiffs who disclosed treating physicians pursuant to Rule 26(a)(2)(C). Put differently, 429 Plaintiffs did not disclose any treating physicians.¹⁴ But for 79 of those 174 Plaintiffs who did, the treating physicians they disclosed cannot provide admissible evidence of specific causation because they did not form causation opinions in the course of treatment.¹⁵

¹² Plaintiffs’ counsel has previously suggested that some Plaintiffs might not need expert testimony to prove their case. In support of that proposition, they have hypothesized that there could be a flight attendant who got a rash immediately after wearing the uniform, purchased an over-the-counter topical treatment for the rash, and never sought treatment from any health care professionals. Plaintiffs suggest that such a hypothetical person’s claims could be decided by a jury based on nothing more than common sense. But based on the documentation Plaintiffs have produced, to the extent that such a flight attendant exists, she is not a Plaintiff in this case. The Plaintiffs’ claims in this matter are complex, and causation requires expert evidence.

¹³ A chart summarizing each Plaintiffs’ alleged evidence of specific causation is attached as Appendix A.

¹⁴ The full list of Plaintiffs who did not disclose treating physicians is attached as Appendix B.

¹⁵ The full list of Plaintiffs who disclosed treating physicians, but for whom no treating physician formed a causation opinion in the course of treatment is attached as Appendix C.

Therefore, for the reasons explained in Defendant Lands' End, Inc.'s Motion to Exclude Testimony of Plaintiffs' Rule 26(a)(2)(C) experts, those treating physicians should be precluded from offering causation testimony. Those 79 Plaintiffs lack admissible expert evidence from treating physicians, and must rely entirely on Plaintiffs' retained expert witnesses.¹⁶

2. Plaintiffs Who Rely Entirely on Retained Experts for Evidence of Specific Causation

508 of 603 Plaintiffs' claims rise or fall with the admissibility of the retained experts' specific causation opinions, as they either did not disclose treating physicians, or disclosed only treating physicians who did not form a causation opinion during the course of treatment (and thus must be excluded). These 508 Plaintiffs thereby rely entirely on Plaintiffs' retained expert witnesses to provide admissible evidence regarding specific causation.

While Drs. Apple and Scheinman claim to give specific causation opinions as to *all* Plaintiffs, they reviewed partial medical records for only roughly 30 Plaintiffs combined. Both Drs. Scheinman and Apple admitted that they had no information about the other roughly 570 Plaintiffs in this case, and would at best be extrapolating from the 30 Plaintiffs' partial medical records that they reviewed. Dkt. No. 170, Deposition of Pamela Scheinman, M.D., February 9, 2021 at 270:25–271:6; Dkt. No. 168, Deposition of Fred Apple, Ph.D, April 14, 2021 at 100:1–102:17. Neither expert can credibly provide an opinion about the cause of a particular Plaintiff's injury when they have no evidence about that Plaintiff or their alleged injuries whatsoever. And

¹⁶ Lands' End maintains that all Plaintiffs' personal injury claims should be dismissed for the reasons stated in Sections IV.A-C, *infra*, and therefore the Court should not even reach this analysis. But if the Court does reach this point of the analysis, Lands' End is not challenging *specific* causation as to the 95 Plaintiffs who have treating physician disclosures that are not subject to Lands' End, Inc.'s Motion to Exclude Testimony from Plaintiffs' Rule 26(a)(2)(C) Experts. Lands' End reserves the right to challenge specific causation as to those Plaintiffs on individual bases at a later time.

even as to the 30 Plaintiffs for whom Drs. Apple and Scheinman did review partial records, those opinions should be excluded. *See* Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Fred Apple, Ph.D., Dkt. No. 184; Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Pamela Scheinman, M.D., Dkt. No. 189.

Unlike Drs. Apple and Scheinman, Dr. Freeman only purports to provide a specific causation opinion that a Plaintiff's symptoms were more likely than not caused by the uniform about 276 remaining Plaintiffs, listed in Exhibit A of his report, admitting that he would need additional evidence to reach conclusions about other Plaintiffs.¹⁷ And as with Drs. Apple and Scheinman, Dr. Freeman's opinions as to those 276 Plaintiffs should be excluded as well. *See* Lands' End Inc.'s Memorandum of Law in Support of Motion to Exclude the Opinions of Michael Freeman, Ph.D., Dkt. No. 181. As a result, the 508 Plaintiffs who must rely on Plaintiffs' retained 26(a)(2)(B) experts have no admissible specific causation testimony, and Lands' End is entitled to summary judgment on their personal injury claims.

E. Issue Preclusion Bars Plaintiffs who Filed and Were Denied Workers' Compensation Claims From Bringing Suit and Lands' End is Entitled to Summary Judgment on Those Claims

Both prior to and throughout this litigation, hundreds of Plaintiffs filed workers' compensation claims related to the Delta uniform with Sedgwick Claims Management Services ("Sedgwick"), Delta's claims management services provider. Based on the claim files that were produced in this litigation, Sedgwick denied many of Plaintiffs' claims due to inability to show a causal relationship between the uniforms and Plaintiffs' alleged symptoms. A relatively small number of those Plaintiffs appealed Sedgwick's denial to their state Workers' Compensation

¹⁷ The full list of Plaintiffs who were not included in Dr. Freeman's report, for whom Drs. Apple and Scheinman reviewed no materials whatsoever, and who did not make Rule 26(a)(2)(C) disclosures is attached as Appendix D.

Board and some of those claims were denied on the merits (many other appeals were denied due to lack of prosecution or failure to appear). Plaintiffs whose claims were denied by a state administrative law judge for lack of causation are precluded from litigating the issue of causation again in this matter. Because a state administrative law judge has already determined, after affording those Plaintiffs a full and fair opportunity to contest the issue, that the Delta uniform did not cause the alleged symptoms, Plaintiffs cannot show causation for their personal injury claims and Lands' End is entitled to summary judgment on their claims.

The collateral estoppel doctrine¹⁸ prevents the “relitigation of issues in a subsequent proceeding when . . . the issues which form the basis of the estoppel were actually litigated and decided on the merits.” *Cook Cty. v. MidCon Corp.*, 773 F. 2d 892, 898 (7th Cir. 1985); *see also Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (explaining that issue preclusion bars successive litigation even if the issue recurs in the context of a different claim). “To determine whether issue preclusion applie[s],” federal district courts look to the law on preclusion in the state “where the [prior] judgment was rendered.” *Adams v. Adams*, 738 F. 3d 861, 865 (7th Cir. 2013) (citing 28 U.S.C. § 1738; *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481–82 (1982)).

Based on the claim files Sedgwick produced in this litigation, all Plaintiffs whose workers’ compensation appeals were denied for failure to show causation filed such appeals in New York.¹⁹ Accordingly, this Court must give the same preclusive effect to the Workers’ Compensation Board decisions as those decisions would receive under New York state law. *Allen v. McCurry*, 449 U.S. 90, 101 (1980); *see also United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)

¹⁸ Collateral estoppel and issue preclusion are synonyms.

¹⁹ The following Plaintiffs must be estopped from relitigating whether the uniforms caused their purported health symptoms: Angela Barthelemy, Javier Bazan-Stone, and Caroline Vangrieken.

(“When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.”).

Under New York law, “[i]n order to invoke the collateral estoppel doctrine it is required that (1) an issue in the present proceeding be identical to that necessarily decided in the prior proceeding, and (2) in the prior proceeding the party against whom preclusion is sought was afforded a full and fair opportunity to contest the issue.” *Langdon v. WEN Mgmt. Co.*, 147 A.D.2d 450, 451, 537 N.Y.S.2d 603, 604 (N.Y. App. Div. 1989). Collateral estoppel applies to determinations by the Workers’ Compensation Board. *Ryan v. New York Tel. Co.*, 467 N.E.2d 487, 499 (N.Y. 1984). The requirements for collateral estoppel are satisfied here. When Plaintiffs appealed the denials from Sedgwick, the issue on appeal was whether there was evidence that the uniforms caused Plaintiffs’ alleged symptoms for which Plaintiffs would be entitled to workers’ compensation benefits. *See* Proposed Findings of Fact ¶ 18 (Aug. 19, 2020 Workers’ Compensation Board Order for Plaintiff Caroline Vangrieken) at 1 (“The issue presented for Administrative Review is whether the medical evidence supports establishing this claim for causally related chronic nasal congestion, post-nasal drip and a skin rash.”). In the context of each such appeal, the Plaintiff in question underwent independent medical evaluations, presented evidence of her alleged symptoms, conducted depositions, and was fully heard on her claims. *See, e.g.*, Proposed Findings of Fact ¶¶ 14, 17, 21 (independent medical evaluations of Plaintiffs Barthelemy, Bazan-Stone, and Vangrieken). In each case, the administrative law judge or the Workers’ Compensation Board Panel determined that there was no causal relationship between Plaintiffs’ alleged symptoms and the uniform. *See* Proposed Findings of Fact ¶ 15 (Judge Enobakhare Feb. 2, 2021 Decision re: Angela Barthelemy) (“[T]here is no work related causality

to the sites claimed. The claim for occupation disease from work uniform due to chemical exposure, pruritic erythematous, hair loss, fatigue, menstrual abnormality, memory loss, impairment and coughing is hereby dismissed.”); *id.* ¶ 22 (Judge Enobakhare Jan. 14, 2021 Decision re: Javier Bazan-Stone) (“[T]he claimant has no prima facie medical evidence for allergic rhinitis as the doctor testified that he cannot state within a reasonable degree of medical certainty that the uniform in question caused the claimant’s allergic rhinitis.”); *id.* ¶ 19 (Aug. 19, 2020 Workers’ Compensation Board Order for Plaintiff Caroline Vangrieken) (“Upon review of the file, the Board Panel finds insufficient evidence to find this claim compensable.”).

The doctrine of collateral estoppel precludes the Plaintiffs at issue from relitigating the prior determinations by Judge Enobakhare and the New York Workers’ Compensation Board. *Ryan*, 467 N.E.2d at 502 (“A comparison of the material issues raised in this action with those resolved by the prior administrative determination, and an examination of the prior proceeding itself show that both requisite criteria, the identity and decisiveness of the issues and the opportunity for a full and fair hearing have been satisfied.”). Plaintiffs had a full and fair opportunity to litigate whether the uniform caused their issues in the course of their workers’ compensation appeal, they may not do so again.

V. CONCLUSION

For the foregoing reasons, Lands’ End respectfully requests that this Court grant partial summary judgment in its favor as to all of Plaintiffs’ claims sounding in personal injury.

Dated: October 4, 2021

Respectfully submitted,

LATHAM & WATKINS LLP

By: s/ U. Gwyn Williams
U. Gwyn Williams (*pro hac vice*)
Samuel A. Townsend (*pro hac vice*)
Avery E. Borreliz (*pro hac vice*)
200 Clarendon Street
Boston, Massachusetts 02116
Telephone: 617.948.6000
Facsimile: 617.948.6001
gwyn.williams@lw.com
samuel.townsend@lw.com
avery.borreliz@lw.com

*Attorneys for Defendant
Lands' End, Inc.*

Appendix A

<u>Plaintiffs' alleged evidence of specific causation</u>					
Plaintiff	Purported Specific Causation Opinion From:				Provided Deficient Treating Physician Disclosure²⁰
	Dr. Freeman ("Probable")	Dr. Scheinman	Dr. Apple	Treating Physician Disclosure	
Joseph Abamonte	Yes	Yes	No	Yes	No
Julie Abate	Yes	No	No	Yes	Yes
Kimberly Abbey	Yes	No	No	Yes	Yes
Rachel Abukhdeir	Yes	Yes	Yes	No	--
Alina Adams	No	No	No	No	--
Kathy Adams	No	No	No	No	--
Korey Adams	Yes	No	No	No	--
Carol Adams-Conner	Yes	No	No	No	--
Maria Esther Ailor	Yes	No	No	No	--
Erica Alfaro	Yes	No	No	No	--
Alexandria Allen	No	No	No	Yes	Yes
Cynthia Allen	No	No	No	No	--
Sharon Allison	Yes	No	No	No	--
Eeva Alminar	No	No	No	No	--
Ashley Alvarado	No	No	No	No	--
Barbara Alves	No	No	No	Yes	Yes
Kyoungmi An	No	No	No	No	--
Jami Lyn Anderson	Yes	No	No	No	--
Marcella Anderson	No	No	No	No	--
Rika Anderson	Yes	No	No	Yes	No
Tarja Anderson	Yes	No	No	No	--

²⁰ A “yes” in this column indicates that at least one of Plaintiff’s treating physician disclosures is challenged in Lands’ End’s Motion to Exclude Treating Physicians. *See* Dkt. No. 191. A “no” in this column indicates that Lands’ End is not challenging that Plaintiff’s treating physician disclosure(s) at this time. A “--” in this column indicates that Plaintiff did not provide a treating physician disclosure.

Tracey Anderson	No	No	No	No	--
Stephanie Andrews	No	Yes	Yes	No	--
Victoria Andrews-Winey	Yes	No	No	Yes	Yes
Patricia Anthony	No	No	No	No	--
Annmarie Antonelli	No	No	No	Yes	No
Hilary Arana	Yes	No	No	No	--
Rochelle Arch-Hayosteck	Yes	No	No	Yes	No
Corlis Armmer	Yes	No	No	Yes	Yes
Maia Arroyo-Roppo	Yes	No	No	No	--
Nakisha Artis	Yes	No	No	No	--
Stacey Atkins	Yes	No	No	No	--
Bonnie Audsley	Yes	No	No	No	--
Lyn Augustin	No	No	No	No	--
Janelle Austin	No	No	Yes	No	--
Nina Aviles	No	No	No	No	--
Lawrence Baird	Yes	No	No	No	--
Jenni Baldoz	Yes	No	No	No	--
Dana Banks	Yes	No	No	No	--
Christina Barauskas	Yes	No	No	No	--
Debra Baretta	Yes	Yes	No	Yes	Yes
Denise (Debra) Barnes	No	No	No	No	--
Denise Barnes	Yes	No	No	No	--
Lynda Barnett (Martin)	No	No	No	No	--
Kimberly Barrera	Yes	No	No	Yes	Yes
Angela Barthelemy	No	No	No	Yes	Yes
Javier Bazanstone	No	No	No	No	--
John Beckstrand	No	No	No	No	--
Cori Behrends	Yes	Yes	Yes	Yes	No
Kelly Bell	Yes	No	No	No	--
Linda Bell	No	No	No	No	--
Maura Benatti	Yes	No	No	Yes	No
Cindy Berg	Yes	No	No	No	--
Cynthia Berzel	No	No	No	Yes	Yes
Michael Besner	Yes	No	No	No	--
Nicole Betson	Yes	No	No	No	--
Jean Bever	No	No	No	No	--
Kathlyn Bez	No	No	No	No	--
Mona Bhardwaj	Yes	No	No	No	--
Polly Biasucci	Yes	No	No	Yes	Yes
Sabrina Biggers	Yes	No	No	Yes	Yes
Sacha Bigler	No	No	No	Yes	No

Sharon Bishop	No	No	No	No	--
Janet Black	Yes	No	No	No	--
Julia Blake-Wilks	Yes	No	No	No	--
James Blevins	No	No	No	No	--
Frances Blitz	Yes	No	No	No	--
Kathleen Bodene	Yes	No	No	Yes	No
Christy Bodznick	Yes	No	No	No	--
Mary Boerma	No	No	No	No	--
Amanda Bolduc	Yes	No	No	No	--
Lorraine Bolla	Yes	No	No	No	--
Marilyn Bowden	Yes	No	Yes	Yes	No
Karen Bowers	No	No	No	No	--
Erika Bowman	Yes	No	No	Yes	Yes
Christine Brabeck	No	No	No	Yes	Yes
Jaclyn Bradley	Yes	No	No	No	--
Madolyn Brand	Yes	No	No	Yes	Yes
Kathleen Breedlove	Yes	No	No	No	--
Eileen Brennan	Yes	No	No	Yes	Yes
Cherie Brenner	Yes	No	No	Yes	No
Monica Brewer	No	No	No	No	--
Kate Britt	No	No	No	Yes	No
Allison Brown	Yes	No	No	No	--
Jennifer Bruce	Yes	No	No	No	--
Joyce Bryant-Burrus	Yes	No	No	No	--
Denise Bryson	No	No	No	No	--
Jacqueline Bucci	Yes	No	No	Yes	No
Jenny Bundy	Yes	No	No	No	--
Kayla Buono	No	No	No	Yes	Yes
Erin Burrey	Yes	No	No	No	--
Faye Butler	No	No	No	No	--
Cha Hui Cain	Yes	No	No	No	--
Antionietta Caldarella	No	No	No	No	--
Priscilla Calvao	Yes	No	No	No	--
Amanda Calvert	Yes	No	No	Yes	Yes
Kathy Campbell	No	No	No	No	--
Maryellen Caner	No	No	No	No	--
Laurette Carns	Yes	No	No	Yes	Yes
Janet Carpentieri	No	No	No	No	--
Deborah Carter	No	No	No	No	--
Sherry Caudill	Yes	No	No	No	--
Tiffany Challis	Yes	No	No	Yes	Yes

Denise Chavez	No	No	No	No	--
Pauline Cheung	No	No	No	Yes	No
Joseph Chiacchio	No	No	No	No	--
Deborah Christensen-Dahl	No	No	No	No	--
Breonte Clark	No	No	No	No	--
Janis Clary	Yes	No	No	No	--
Erin Cleveland	Yes	No	No	No	--
Ronda Cocherell	Yes	No	No	No	--
Gigi Cochrane	Yes	No	No	No	--
Emma Cole	Yes	No	No	Yes	No
Autumn Coleman	No	No	No	Yes	Yes
Andrea Coleman (Troutman)	No	No	No	Yes	No
Jacquelyn Collins	No	No	No	Yes	No
Katherine Comerford	No	No	No	No	--
Donna Constant	Yes	No	No	Yes	No
Diane Conway	No	No	No	Yes	No
Kathleen Cooper	Yes	No	No	No	--
Geralee Corona	No	No	No	No	--
Denise Corsello	No	No	No	No	--
Michael Cortis	No	No	No	No	--
Kathleen Cotnoir	No	No	No	No	--
Susan Couvillion	No	No	No	No	--
Marsha Cowling	Yes	No	No	No	--
Dredrick Cox	No	No	No	Yes	Yes
Bryce Craps	No	No	No	No	--
Linda Creech	No	No	No	No	--
Angela Crowell	Yes	No	No	No	--
Carmen Cuchiara	Yes	No	No	No	--
Travis Culberson	Yes	No	No	Yes	No
Elaine Davis	No	No	No	No	--
Jo-Lynne Davis	Yes	No	No	No	--
Sonja Davis	Yes	No	No	Yes	Yes
Toynal Davis	No	No	No	No	--
Tia Dawkins-Hendricks	Yes	No	No	No	--
Anne Dealy	No	No	No	No	--
Tamara Deangelis	Yes	No	No	Yes	Yes
Monica DeCrescentis	No	No	Yes	No	--
Alexandra Dela	Yes	No	No	Yes	No
Jennifer Delapenha	No	No	No	No	--
Diane Del-Barrio	Yes	No	No	Yes	Yes
Veronica Demaggio	Yes	Yes	No	No	--

Kay Dennis	Yes	No	No	Yes	Yes
Henry Devega	No	No	No	No	--
Joann Deveny	Yes	No	No	Yes	No
Nancy Diamond	Yes	No	No	No	--
Kayla Dibella	Yes	No	No	No	--
Nagelah Dieu	No	No	No	No	--
Linda Dinges	Yes	No	No	No	--
Matthew Sean Dingle	Yes	No	No	No	--
Joanna Dirienzo	Yes	No	No	No	--
Michelle Disangro	No	No	No	No	--
Karen Disantis	Yes	No	No	No	--
Nina Dixon	Yes	No	No	Yes	No
Carra D'nan Dean	Yes	No	No	Yes	Yes
Samantha Doherty	No	No	No	Yes	Yes
Margaret Dolezal	No	No	No	No	--
Nancy Dorman	No	No	No	No	--
Michele Doss	Yes	No	No	No	--
De Vere Dreger Von Dross	No	No	No	No	--
Laura Drewe	Yes	No	No	No	--
Louise Duhamel	No	No	No	No	--
Molly Dunn	No	No	No	No	--
Harriett Duranthon	No	Yes	No	No	--
Cynthia Durushia	Yes	No	No	No	--
Jan Dyssegard	Yes	No	No	No	--
Johnny Edwards	Yes	No	No	No	--
Margaret Edwards	Yes	No	No	No	--
Brent Eglan	No	No	No	No	--
Cheryle Erick	No	No	No	No	--
Jessica Espinosa	No	No	No	No	--
Junko Etherton	Yes	No	No	No	--
Deborah Farrell	Yes	No	No	No	--
Lawrence Farrer	No	No	No	No	--
Eva Farris	No	No	No	No	--
Leslie Faulk	No	No	No	No	--
Nicole Fazio	Yes	No	No	No	--
Melissa Fiedler	Yes	No	No	No	--
Jamie Fine	Yes	No	No	No	--
Kimberly Fitch	No	No	No	No	--
Alicia Fitzgerald	Yes	No	No	No	--
Kathy Fletcher	Yes	No	No	No	--
Kathryn Flynn	No	No	No	No	--

Ashleigh Foote	Yes	No	No	No	--
Charles Forthofer	Yes	No	No	No	--
Judith Franzen	No	No	No	No	--
Belissa Fuentes	No	No	No	No	--
Myra Fuji	No	No	No	No	--
Twila Fultz	No	No	No	Yes	Yes
Deborah Gaddy	No	No	No	No	--
Jada Gaither	Yes	No	No	No	--
Denise Garcia	No	No	No	No	--
Norma Garcia	No	No	No	No	--
Prima Garcia	Yes	No	No	No	--
Judy Garrett	No	No	No	No	--
Bailey Garrison	No	No	No	No	--
Karen Genova	Yes	No	No	No	--
Michele Gentry	Yes	No	No	No	--
Sarah Gerard	No	No	No	No	--
Janet Germann	Yes	No	No	No	--
Amy Gest	Yes	No	No	No	--
Gwyneth Gilbert	No	Yes	Yes	No	--
Blair Glover	No	No	No	No	--
Mari Godbolt	No	No	No	No	--
John Gold	No	No	No	No	--
Linda Goleski	No	No	No	No	--
Maryjo Gondek	No	No	No	No	--
Amber Gonzalez	Yes	No	No	No	--
Trena Grady	No	No	No	No	--
Jamie Grant	No	No	No	No	--
Kathleen Gray	Yes	No	No	Yes	Yes
Shannon Gray	Yes	No	No	Yes	Yes
Jennifer Green	Yes	No	No	No	--
Misha Greer	No	No	No	No	--
Reiauh Gregory	No	No	No	Yes	Yes
Kelci Griffin	Yes	No	No	No	--
Carmen Griffith	No	No	No	No	--
Chandra Gronvold	Yes	No	No	No	--
Nevine Groulx	Yes	No	No	No	--
Gregory Guinn	No	No	No	Yes	Yes
Stephanie Guna	No	No	No	Yes	Yes
Debra Hadler	No	No	No	No	--
Christa Haeffner	No	No	No	No	--
Molly Hair	No	No	No	No	--

Dorothy Hale	No	No	No	No	--
Karen Hallagan	Yes	No	No	Yes	Yes
Linda Hall-Shipman	Yes	No	No	No	--
Kristine Hammer	Yes	No	No	No	--
Claudette Handke	No	No	No	No	--
Victoria Hannigan	No	No	No	No	--
Barbara Hansen	Yes	No	No	No	--
Darla Hansen	No	No	No	No	--
Regina Hansen	Yes	No	No	No	--
Teresa Hansen	No	No	No	Yes	No
Samantha Harding	Yes	No	No	No	--
Samra Harminder	No	No	No	No	--
Kelli Harris	No	No	No	No	--
Kelly Harris	No	No	No	No	--
Lewis Hayden Bell	Yes	No	No	Yes	Yes
Spencer Hayes	Yes	No	No	No	--
Pam Hayes	Yes	No	No	Yes	No
Cathie Hayward	No	No	No	Yes	No
Phyllis Heffelfinger	No	No	Yes	No	--
Kelli Heist	No	No	No	No	--
Nelly Heist	Yes	No	No	No	--
Cindy Held-Szlasda	Yes	No	No	No	--
Shawn Henschal	Yes	No	No	No	--
Bronwyn Henley	No	No	No	Yes	No
Laura Henning	No	No	No	No	--
Tanisha Henry	Yes	No	No	No	--
Susan Hensley	No	No	No	No	--
William Herrera	No	No	No	No	--
Laura Hershberger	Yes	No	No	No	--
Tori Hobson	Yes	No	No	No	--
Katharine Hodge	No	No	No	Yes	Yes
Cheri Hodges	No	No	No	Yes	Yes
Lisa Hogan	No	No	No	No	--
Judy Hollingsworth	No	No	No	No	--
Heather Hotvedt	Yes	No	No	Yes	Yes
Kari Housholder	No	No	No	No	--
Lindsey Howard	No	No	No	Yes	No
Jeannie Howell	No	No	No	No	--
Tzu Ming Hu	No	No	No	Yes	Yes
Julie Huismann	Yes	No	No	Yes	Yes
Stephanie Hunt	No	No	No	No	--

Kendra Hutson	Yes	No	No	No	--
Angela Hyman	Yes	No	No	No	--
Ursula Isidore	Yes	No	No	No	--
Kenneth Jackson	No	No	No	Yes	No
Laura Jackson	No	No	No	No	--
Paula Jackson	No	No	No	Yes	No
Kaitlyn Jagielo	Yes	No	No	No	--
Karen Jay	Yes	No	No	No	--
Kari Johnke-Henzler	Yes	No	No	No	--
Shannon Johnsen	No	No	No	No	--
Beth Ann Johnson	Yes	No	No	Yes	Yes
Benita Johnson	Yes	No	No	Yes	Yes
De Jur Veronique Jones	No	No	No	No	--
Tamika Jones	Yes	No	No	No	--
Tonise Jones	Yes	No	No	No	--
Christopher Joyce	No	No	No	No	--
Kenneth Kaminski	No	No	No	No	--
Jackie Kane	Yes	No	No	Yes	Yes
Kasondra Karr	Yes	No	No	Yes	No
Amanda Karrick	Yes	No	No	No	--
Ruta Kaupiko	Yes	No	No	No	--
Marie Kearse	Yes	No	No	No	--
Erika Keaton	Yes	No	No	No	--
Sondra Kelly	Yes	No	No	No	--
Dianne Kemmer	Yes	No	No	No	--
Brenda Kern	No	No	No	Yes	Yes
Heidi Kessler-Carrington	Yes	No	No	No	--
Cindy Kha	No	No	No	Yes	Yes
Terri Kidd	Yes	No	No	No	--
Jennifer Kim	Yes	No	No	Yes	No
Judie Kirkland	No	No	No	No	--
George Kirslenlor	Yes	No	No	No	--
Leah Kitts	No	No	No	No	--
Kathryn Klinke-Sherrill	Yes	No	No	No	--
Alan Knapp	No	No	No	No	--
Wendy Koopmeiners	Yes	No	No	Yes	No
Stephen Kostora	Yes	No	No	No	--
Kate Kovary	Yes	No	No	No	--
Kristen Kowalczyk	No	No	No	No	--
Ellen Kramer	Yes	No	No	Yes	Yes
Suprena Kretchman	No	No	No	No	--

Jill Kruppa	Yes	No	No	Yes	Yes
Kerry Kruse	Yes	No	No	No	--
Tsipora Kuba	No	No	No	No	--
Corinne Kubal	No	No	No	No	--
Deborah Kuhn	No	No	No	No	--
Renee Labbe	Yes	No	No	Yes	No
Joan Labow	Yes	No	No	Yes	No
Milissa Lachaussee	Yes	No	No	Yes	No
Laura Lackten	No	No	No	No	--
Vernon Lacorte	No	No	No	No	--
Lisa Lamkins	No	No	No	No	--
Marguerite Larsen	Yes	No	No	Yes	Yes
Lisa Larson	Yes	No	No	No	--
Maria Laygo	No	No	No	No	--
Sylvia Lazard	No	No	No	No	--
Jonathan Lazenby	Yes	No	No	Yes	Yes
Adena Leal	Yes	No	No	No	--
Karen Lehman	Yes	No	No	No	--
Eva Elvis	Yes	No	No	No	--
Sheila Lemmens	Yes	No	No	No	--
Elizabeth Leonardo	No	No	Yes	Yes	Yes
Beth Lepor-Friberg	No	No	No	No	--
Pamela Leslie	No	No	No	No	--
Gena LeSueur Poulos	Yes	No	Yes	No	--
Ann Marie Liberatore	No	No	No	No	--
Geraldine Lindseth	No	No	No	No	--
Carissa Lizotte	Yes	No	No	Yes	Yes
Toni Lockhart	No	No	No	Yes	Yes
Kimberly Locksley	No	No	No	No	--
Tonya Lovelace	Yes	No	No	No	--
Dana Love-Linn	Yes	No	No	Yes	No
Christy Lunde	Yes	No	No	Yes	No
Diane Lundstrom	No	No	No	No	--
Kristen Maddick	Yes	No	No	No	--
Jose Maldonado	No	No	No	No	--
Rhea Manalo	Yes	No	No	No	--
Janine Marchildon	Yes	No	No	Yes	Yes
Deborah Marsh	Yes	No	No	No	--
Michael Marte	No	Yes	Yes	No	--
Sarah Martin	Yes	No	No	No	--
Gislaine Martin Botha	Yes	No	No	No	--

Nadim Martiny	No	No	No	Yes	No
Deb Marty	No	No	No	No	--
Eman Marzouq	No	No	No	No	--
Elizabeth Marzullo	Yes	No	No	Yes	Yes
Hasan Mason	No	No	No	No	--
Michael Mathews	No	No	No	No	--
Sarah Mathieu	No	No	No	No	--
Demitrios Mavrogiorgos-Spencer	No	No	No	Yes	Yes
Jamere Maxwell	Yes	No	No	No	--
Tangee McBride	Yes	No	No	No	--
Lorna McCalla	No	No	No	No	--
Michelle McCarron	No	No	No	No	--
Catherine McDonald	Yes	No	No	No	--
Margaret McDonald	No	No	No	No	--
Dawn McDonnell	No	No	No	Yes	Yes
Shaylyn Mcentire	Yes	No	No	No	--
Victoria McGarrity	Yes	No	No	Yes	Yes
Kaitlyn Mcintosh	No	No	No	No	--
Sharon Mcintosh	Yes	No	No	No	--
Cheryl McKay	No	No	No	No	--
Elizabeth McKenzie	No	No	No	No	--
Victoria McLaughlin	Yes	No	No	No	--
Stacey McNeil	No	No	No	Yes	No
Deborah McNulty	No	No	No	No	--
George Mctigue	No	No	No	No	--
Carmen Meader	No	No	No	No	--
Mae Naomi Menda	Yes	No	No	No	--
Wallie Maria Meyer	No	No	Yes	No	--
Lisa Miller	Yes	No	No	Yes	Yes
Lynn Miller	No	No	No	No	--
Margaret Miller	Yes	No	No	No	--
Joan Tormey Milton	No	No	No	No	--
Nicole Misurelli	No	No	No	No	--
Jessica Mizrahi	Yes	No	No	No	--
Richard Mogan	No	No	No	No	--
Leyda Molina	No	No	No	No	--
Gary Monroe	Yes	No	No	No	--
Diane Montgomery-Brock	No	No	No	No	--
Bromley Moore	No	No	No	No	--
Sharon Moore	Yes	No	No	Yes	Yes
Daisy Morgan	No	No	No	No	--

Vonda Morgan (Thomas)	No	No	No	Yes	Yes
Melissa Morrill-Furman	Yes	No	No	No	--
Venetia Morris	Yes	No	No	No	--
Michelle Morrison	Yes	No	No	Yes	No
Patrick Morse	Yes	No	No	Yes	Yes
Melinda Motor	No	No	No	No	--
Ann Mueller	Yes	No	No	No	--
Wesam Mughrabi	Yes	No	No	Yes	No
Adilah Muhammad	No	No	No	No	--
Rebecca Mulligan	No	No	No	No	--
Rosemary Munzenmayer	No	No	No	No	--
Bonnie Muro	No	No	No	No	--
Janet Murphree	No	No	No	No	--
Deborah Murphy	No	No	Yes	Yes	Yes
Wanda Murray	No	No	No	No	--
Ayten Nadeau	Yes	No	No	Yes	No
Yumiko Nakagami	No	No	No	No	--
Kimloan Nardo	No	No	No	No	--
Kathryn Nasman	No	No	No	Yes	Yes
Britteny Neal	No	No	No	Yes	No
Jenee Neeb	No	No	No	Yes	No
Cheryl Nelson	No	No	No	Yes	Yes
Janet Nelson	No	No	No	No	--
Kathleen Nelson	No	No	No	Yes	Yes
Susan Newland	Yes	No	No	Yes	Yes
Deanne Nichelson	No	No	No	No	--
Charlene Noah	No	No	No	No	--
Beth Nordyke	Yes	No	No	No	--
Michele Noren	Yes	Yes	No	No	--
Yvette Nugent	Yes	No	No	Yes	No
Hannah Odafe	No	No	No	No	--
Siobhan O'Donnell	Yes	No	No	No	--
Muhammed Okedeyi	No	No	No	No	--
Kristina Olson-Woodhurst	Yes	No	No	No	--
Kody Ondriezek	No	No	No	Yes	No
Benda O'Neale	Yes	No	No	Yes	No
Evelyn Orgeron	Yes	No	No	No	--
Penny Owens	Yes	Yes	Yes	No	--
Cintia Pace	No	No	No	Yes	Yes
Mary Padau	No	No	No	No	--
Gina Page-Nelson	No	No	No	Yes	Yes

Kayla Parnell	No	No	No	No	--
Jacqueline Parsons	Yes	No	No	Yes	Yes
Stanley Partyka	No	No	No	Yes	Yes
Angela Patterson	No	No	No	No	--
Kimberly Pedretti	Yes	No	No	No	--
Jeanette Pedroni	No	No	No	No	--
Konstanze Pelargus	Yes	No	No	No	--
Susan Pence	No	No	No	Yes	Yes
Francisca Perez	No	No	No	Yes	Yes
Karina Perez	No	No	No	No	--
Virgina Perez	No	No	No	No	--
Joanne Pergola	Yes	No	No	Yes	Yes
Jodi Pergola	Yes	No	No	Yes	No
Chelsea Perry	Yes	No	Yes	No	--
Brian Perry	Yes	No	No	No	--
Laurie Peterson	No	No	No	No	--
Tina Peterson-Fong	No	No	No	No	--
Nancy Petrone	No	No	No	No	--
Lindsay Phelps	Yes	No	No	Yes	Yes
Chase Phillips	Yes	No	No	No	--
Yanick Picault-Cadet	No	No	No	No	--
Gina Pickett	No	No	No	No	--
Jennifer Pierce	Yes	No	No	Yes	No
Anita Pierce (Malloy)	Yes	No	No	No	--
Beatrice Pinon	No	No	No	No	--
Tina Pipkin	No	No	No	No	--
Mario Porterfield	No	No	No	No	--
Andrea Power	No	No	No	Yes	Yes
Shana Provost	No	No	No	No	--
Jacqueline Quigley	No	No	No	No	--
Rachelle Quinn (Treleven)	No	No	No	Yes	No
Antoinette Qvistorff	No	No	No	No	--
Laquail Ramos	No	No	No	No	--
Julia Raymond-Green	No	No	No	Yes	Yes
Debbie Reed	Yes	No	No	No	--
Mary Reed	No	No	No	No	--
Lois Reinke	No	No	No	No	--
Margaret Remus	Yes	No	No	Yes	No
Donna Rezutko	Yes	No	No	No	--
Stephanie Rhynes	No	No	No	No	--
Christina Rice	Yes	No	No	No	--

Kimberly Richa	No	No	No	No	--
Leicha Richardson	No	No	No	No	--
Ashley Roberts	Yes	No	No	Yes	No
Deborah Roeber	Yes	No	No	Yes	Yes
Kristin Rohlif	No	No	No	Yes	No
Margareta Rohlik	No	No	No	No	--
Keri Rojas	No	No	No	Yes	Yes
Shamil Rojas	No	No	No	No	--
Peter Rooney	Yes	No	No	No	--
Rebecca Rostkowski	Yes	No	No	No	--
Tammy Rustad	Yes	No	No	Yes	Yes
Becky Sallander	No	No	No	Yes	Yes
Danielle Sanders	No	No	No	No	--
Brenda Sanderson Cook	Yes	No	Yes	No	--
Monica Santamaria	No	No	No	No	--
Lisa Satterfield	No	No	No	No	--
Nagisa Saudargas	No	No	No	Yes	Yes
Beatrice Saunders	No	No	No	Yes	Yes
Meghan Schaefer	No	No	No	No	--
Philip Schiefer	No	No	No	No	--
Katie Schilling	Yes	No	No	Yes	No
Kristine Schmidt	No	No	No	No	--
Sonya Schuschel	Yes	No	No	No	--
Brandis Scoggins	No	No	No	No	--
Cynthia Sedustine	No	No	Yes	Yes	Yes
Aimee Seehausen	No	No	No	No	--
Lisa Seibert	No	No	No	No	--
Elizabeth Seymour	Yes	No	No	No	--
Lisa Shackelford	Yes	No	No	No	--
Kristen Shaker	No	No	No	No	--
Rachel Shanklin	Yes	No	No	No	--
Rebecca Sheldon	No	No	No	Yes	No
Tiffany Shelton	Yes	No	No	Yes	Yes
Alethea Sheppard	No	No	No	No	--
Michelle Sherack	No	No	No	No	--
Dellane Shippee	Yes	No	No	No	--
Brenda Shorkey	Yes	No	No	No	--
Melynda Sinsley	No	No	No	Yes	No
Amber Smith	No	No	No	No	--
Angela Smith	No	No	No	Yes	Yes
Salinah Smith	No	No	Yes	No	--

Dana Smith	No	No	Yes	No	--
Emily Snellgrove	No	No	No	Yes	No
Franchesca Soto	Yes	No	No	Yes	Yes
Karen Spease	No	No	No	No	--
Carolyn Spiller	No	No	No	No	--
Angie Spradling	No	No	No	No	--
Staci Spurlock	No	No	No	No	--
Rachael Stalnaker	Yes	No	No	No	--
Debra Stanley-Stewart	No	No	No	No	--
D'Erica Stevenson	No	No	No	No	--
Suzanne Stewart	No	No	No	No	--
Colette Stickley	No	No	No	No	--
Karen Stokes	No	No	No	No	--
Nikki Stone	No	No	No	No	--
Ayfer Street	No	No	No	Yes	No
Jill Strieter	No	No	No	Yes	Yes
Lisa Suemnicht-Laack	Yes	No	No	No	--
Patricia Sutherland	No	No	No	No	--
Rebecca Sydeski	No	No	No	No	--
Colleen Sylves	No	No	No	No	--
Lynn Sypniewski	Yes	No	No	No	--
Randa Talley	No	No	No	No	--
Rebeccah Tangen	Yes	No	No	Yes	No
Arza Tannous	Yes	No	No	No	--
Delik (Dilek) Tas	No	No	No	No	--
Susan Tate	No	No	No	No	--
Tisha Taylor	No	No	No	Yes	No
Tracy Elizabeth Taylor	Yes	No	No	Yes	No
Laurie Tesch	No	No	No	No	--
Holly Thompson	No	No	No	No	--
Jason Thompson	No	No	No	No	--
Susan Thompson	No	No	No	No	--
Troy Thorup	Yes	No	No	No	--
Juliet Thurab	No	No	No	Yes	No
Kimberly Tobin	No	No	No	No	--
Chase Todd	No	No	No	Yes	Yes
Kristin Tompkins	No	No	No	Yes	Yes
Linda Tomson	No	No	No	No	--
Henrique Torres	Yes	No	No	No	--
Diana True	Yes	Yes	Yes	Yes	No
Andrea Trzaska	Yes	No	No	Yes	No

Kathleen Tschishow	No	No	No	Yes	Yes
Tina Tucker	Yes	No	No	Yes	Yes
Hope Tucker	No	No	No	No	--
Lisa Uddin-Barneswright	No	No	No	No	--
Kathryn Ude	Yes	Yes	Yes	Yes	Yes
Julianne Lynn Umali	Yes	No	No	No	--
Teri Unsworth	No	No	No	No	--
Tirana Vaknin	Yes	No	No	Yes	Yes
Lynda Valdez	No	Yes	Yes	No	--
Rosemay Vanderbrink	No	No	No	Yes	No
Caroline Vangrieken	No	No	No	Yes	Yes
John Vanrisseghem	Yes	No	No	No	--
Malin Vejfors	Yes	No	No	Yes	Yes
Allyson Victory	Yes	No	No	No	--
Marina Voris	No	No	No	No	--
Kerri Vrey	No	No	No	Yes	No
Graeme Wagner	Yes	No	No	No	--
Janice Waitt	Yes	No	No	Yes	Yes
Carol Walker	No	No	No	No	--
Lisa Walker	Yes	No	No	Yes	Yes
Wende Walker	No	No	No	Yes	Yes
Lauri Walters	No	No	No	No	--
Michelle Warner	No	Yes	Yes	No	--
Vernell Washington	Yes	No	No	No	--
Troye Washington-Clanton	No	No	Yes	Yes	No
Kate Weida	Yes	No	No	No	--
Leah Weimer	Yes	No	No	No	--
Robin Whaley	Yes	No	No	Yes	Yes
Diane White	No	No	No	No	--
Melanie Wigdahl	No	No	No	Yes	No
Vanessa Wilbert	Yes	No	No	Yes	No
Randi Willett	Yes	No	No	No	--
Lisa Willette	Yes	No	No	Yes	Yes
Adreean Williams	No	No	No	Yes	No
Kathy Williams	No	No	No	Yes	No
Dena Wilson	No	No	No	No	--
Johanna Winkler	No	No	No	No	--
Terri Winslow	No	No	No	No	--
Cindy Wood	No	No	No	No	--
Lisa Woodcock	No	No	No	No	--
Leah Wotipka	No	No	No	No	--

Linda Wright	Yes	No	No	Yes	Yes
Amy Yon	No	No	No	Yes	Yes
Kathy Duncan Young	No	No	No	No	--
Bonnie Younker	Yes	No	No	No	--
Anna Zaluzhny	Yes	No	No	No	--
Julie Ziemann	Yes	No	No	No	--
Patricia Zopfi	No	No	No	No	--
Christina Zrizri	No	No	No	No	--

Appendix B

Plaintiffs who did not make Rule 26(a)(2)(C) disclosures of treating physicians:

1. Rachel Abukhdeir	43. Mona Bhardwaj	85. Kathleen Cotnoir
2. Alina Adams	44. Sharon Bishop	86. Susan Couvillion
3. Kathy Adams	45. Janet Black	87. Marsha Cowling
4. Korey Adams	46. Julia Blake-Wilks	88. Bryce Craps
5. Carol Adams-Conner	47. James Blevins	89. Linda Creech
6. Maria Esther Ailor	48. Frances Blitz	90. Angela Crowell
7. Erica Alfaro	49. Christy Bodznick	91. Carmen Cuchiara
8. Cynthia Allen	50. Mary Boerma	92. Elaine Davis
9. Sharon Allison	51. Amanda Bolduc	93. Jo-Lynne Davis
10. Eeva Alminar	52. Lorraine Bolla	94. Toynal Davis
11. Ashley Alvarado	53. Karen Bowers	95. Tia Dawkins-Hendricks
12. Kyoungmi An	54. Jaclyn Bradley	96. Anne Dealy
13. Jami Lyn Anderson	55. Kathleen Breedlove	97. Monica DeCrescentis
14. Marcella Anderson	56. Monica Brewer	98. Jennifer Delapenha
15. Tarja Anderson	57. Allison Brown	99. Veronica Demaggio
16. Tracey Anderson	58. Jennifer Bruce	100. Henry Devega
17. Stephanie Andrews	59. Joyce Bryant-Burrus	101. Nancy Diamond
18. Patricia Anthony	60. Denise Bryson	102. Kayla Dibella
19. Hilary Arana	61. Jenny Bundy	103. Nagelah Dieu
20. Maia Arroyo-Roppo	62. Erin Burrey	104. Linda Dinges
21. Nakisha Artis	63. Faye Butler	105. Matthew Sean Dingle
22. Stacey Atkins	64. Cha Hui Cain	106. Joanna Dirienzo
23. Bonnie Audsley	65. Antonietta Caldarella	107. Michelle Disangro
24. Lyn Augustin	66. Priscilla Calvao	108. Karen Disantis
25. Janelle Austin	67. Kathy Campbell	109. Margaret Dolezal
26. Nina Aviles	68. Maryellen Caner	110. Nancy Dorman
27. Lawrence Baird	69. Janet Carpentieri	111. Michele Doss
28. Jenni Baldoz	70. Deborah Carter	112. De Vere Dreger Von Dross
29. Dana Banks	71. Sherry Caudill	113. Laura Drewe
30. Christina Barauskas	72. Denise Chavez	114. Louise Duhamel
31. Denise (Debra) Barnes	73. Joseph Chiacchio	115. Molly Dunn
32. Denise Barnes	74. Deborah Christensen-Dahl	116. Harriett Duranthon
33. Lynda Barnett (Martin)	75. Breonte Clark	117. Cynthia Durushia
34. Javier Bazanstone	76. Janis Clary	118. Jan Dyssegard
35. John Beckstrand	77. Erin Cleveland	119. Johnny Edwards
36. Kelly Bell	78. Ronda Cocherell	120. Margaret Edwards
37. Linda Bell	79. Gigi Cochrane	121. Brent Eglund
38. Cindy Berg	80. Katherine Comerford	122. Cheryle Erick
39. Michael Besner	81. Kathleen Cooper	123. Jessica Espinosa
40. Nicole Betson	82. Geralee Corona	124. Junko Etherton
41. Jean Bever	83. Denise Corsello	125. Deborah Farrell
42. Kathlyn Bez	84. Michael Cortis	126. Lawrence Farrer

127. Eva Farris	173. Kristine Hammer	219. Heidi Kessler-Carrington
128. Leslie Faulk	174. Claudette Handke	220. Terri Kidd
129. Nicole Fazio	175. Victoria Hannigan	221. Judie Kirkland
130. Melissa Fiedler	176. Barbara Hansen	222. George Kirslenor
131. Jamie Fine	177. Darla Hansen	223. Leah Kitts
132. Kimberly Fitch	178. Regina Hansen	224. Kathryn Klinke-Sherrill
133. Alicia Fitzgerald	179. Samantha Harding	225. Alan Knapp
134. Kathy Fletcher	180. Samra Harminder	226. Stephen Kostora
135. Kathryn Flynn	181. Kelli Harris	227. Kate Kovary
136. Ashleigh Foote	182. Kelly Harris	228. Kristen Kowalczyk
137. Charles Forthofer	183. Spencer Hayes	229. Suprena Kretchman
138. Judith Franzen	184. Phyllis Heffelfinger	230. Kerry Kruse
139. Belissa Fuentes	185. Kelli Heist	231. Tsipora Kuba
140. Myra Fuji	186. Nelly Heist	232. Corinne Kubal
141. Deborah Gaddy	187. Cindy Held-Szlasda	233. Deborah Kuhn
142. Jada Gaither	188. Shawn Henschel	234. Laura Lackten
143. Denise Garcia	189. Laura Henning	235. Vernon Lacorte
144. Norma Garcia	190. Tanisha Henry	236. Lisa Lamkins
145. Prima Garcia	191. Susan Hensley	237. Lisa Larson
146. Judy Garrett	192. William Herrera	238. Maria Laygo
147. Bailey Garrison	193. Laura Hershberger	239. Sylvia Lazard
148. Karen Genova	194. Tori Hobson	240. Adena Leal
149. Michele Gentry	195. Lisa Hogan	241. Karen Lehman
150. Sarah Gerard	196. Judy Hollingsworth	242. Eva Elvis
151. Janet Germann	197. Kari Housholder	243. Sheila Lemmens
152. Amy Gest	198. Jeannie Howell	244. Beth Lepor-Friberg
153. Gwyneth Gilbert	199. Stephanie Hunt	245. Pamela Leslie
154. Blair Glover	200. Kendra Hutson	246. Gena LeSueur Poulos
155. Mari Godbolt	201. Angela Hyman	247. Ann Marie Liberatore
156. John Gold	202. Ursula Isidore	248. Geraldine Lindseth
157. Linda Goleski	203. Laura Jackson	249. Kimberly Locksley
158. Maryjo Gondek	204. Kaitlyn Jagielo	250. Tonya Lovelace
159. Amber Gonzalez	205. Karen Jay	251. Diane Lundstrom
160. Trena Grady	206. Kari Johnke-Henzler	252. Kristen Maddick
161. Jamie Grant	207. Shannon Johnsen	253. Jose Maldonado
162. Jennifer Green	208. De Jur Veronique Jones	254. Rhea Manalo
163. Misha Greer	209. Tamika Jones	255. Deborah Marsh
164. Kelci Griffin	210. Tonise Jones	256. Michael Marte
165. Carmen Griffith	211. Christopher Joyce	257. Sarah Martin
166. Chandra Gronvold	212. Kenneth Kaminski	258. Gislaine Martin Botha
167. Nevine Groulx	213. Amanda Karrick	259. Deb Marty
168. Debra Hadler	214. Ruta Kaupiko	260. Eman Marzouq
169. Christa Haeffner	215. Marie Kearse	261. Hasan Mason
170. Molly Hair	216. Erika Keaton	262. Michael Mathews
171. Dorothy Hale	217. Sondra Kelly	263. Sarah Mathieu
172. Linda Hall-Shipman	218. Dianne Kemmer	264. Jamere Maxwell

265.	Tangee McBride	311.	Muhammed Okedeyi	357.	Kristine Schmidt
266.	Lorna McCalla	312.	Kristina Olson-Woodhurst	358.	Sonya Schuschel
267.	Michelle McCarron	313.	Evelyn Orgeron	359.	Brandis Scoggins
268.	Catherine McDonald	314.	Penny Owens	360.	Aimee Seehausen
269.	Margaret McDonald	315.	Mary Padau	361.	Lisa Seibert
270.	Shaylyn Mcentire	316.	Kayla Parnell	362.	Elizabeth Seymour
271.	Kaitlyn McIntosh	317.	Angela Patterson	363.	Lisa Shackelford
272.	Sharon McIntosh	318.	Kimberly Pedretti	364.	Kristen Shaker
273.	Cheryl McKay	319.	Jeanette Pedroni	365.	Rachel Shanklin
274.	Elizabeth McKenzie	320.	Konstanze Pelargus	366.	Alethea Sheppard
275.	Victoria McLaughlin	321.	Karina Perez	367.	Michelle Sherack
276.	Deborah McNulty	322.	Virgina Perez	368.	Dellane Shippee
277.	George Mctigue	323.	Chelsea Perry	369.	Brenda Shorkey
278.	Carmen Meader	324.	Brian Perry	370.	Amber Smith
279.	Mae Naomi Menda	325.	Laurie Peterson	371.	Salinah Smith
280.	Wallie Maria Meyer	326.	Tina Peterson-Fong	372.	Dana Smith
281.	Lynn Miller	327.	Nancy Petrone	373.	Karen Spease
282.	Margaret Miller	328.	Chase Phillips	374.	Carolyn Spiller
283.	Joan Tormey Milton	329.	Yanick Picault-Cadet	375.	Angie Spradling
284.	Nicole Misurelli	330.	Gina Pickett	376.	Staci Spurlock
285.	Jessica Mizrahi	331.	Anita Pierce (Malloy)	377.	Rachael Stalnaker
286.	Richard Mogan	332.	Beatrice Pinon	378.	Debra Stanley-Stewart
287.	Leyda Molina	333.	Tina Pipkin	379.	D'Ericka Stevenson
288.	Gary Monroe	334.	Mario Porterfield	380.	Suzanne Stewart
289.	Diane Montgomery-Brock	335.	Shana Provost	381.	Colette Stickley
290.	Bromley Moore	336.	Jacqueline Quigley	382.	Karen Stokes
291.	Daisy Morgan	337.	Antoinette Qvistorff	383.	Nikki Stone
292.	Melissa Morrill-Furman	338.	Laquail Ramos	384.	Lisa Suemnicht-Laack
293.	Venetia Morris	339.	Debbie Reed	385.	Patricia Sutherland
294.	Melinda Motor	340.	Mary Reed	386.	Rebecca Sydeski
295.	Ann Mueller	341.	Lois Reinke	387.	Colleen Sylves
296.	Adilah Muhammad	342.	Donna Rezutko	388.	Lynn Sypniewski
297.	Rebecca Mulligan	343.	Stephanie Rhynes	389.	Randa Talley
298.	Rosemary Munzenmayer	344.	Christina Rice	390.	Arza Tannous
299.	Bonnie Muro	345.	Kimberly Richa	391.	Delik (Dilek) Tas
300.	Janet Murphree	346.	Leicha Richardson	392.	Susan Tate
301.	Wanda Murray	347.	Margareta Rohlik	393.	Laurie Tesch
302.	Yumiko Nakagami	348.	Shamil Rojas	394.	Holly Thompson
303.	Kimloan Nardo	349.	Peter Rooney	395.	Jason Thompson
304.	Janet Nelson	350.	Rebecca Rostkowski	396.	Susan Thompson
305.	Deanne Nichelson	351.	Danielle Sanders	397.	Troy Thorup
306.	Charlene Noah	352.	Brenda Sanderson Cook	398.	Kimberly Tobin
307.	Beth Nordyke	353.	Monica Santamaria	399.	Linda Tomson
308.	Michele Noren	354.	Lisa Satterfield	400.	Henrique Torres
309.	Hannah Odafe	355.	Meghan Schaefer	401.	Hope Tucker
310.	Siobhan O'Donnell	356.	Philip Schiefer	402.	Lisa Uddin-Barneswright

403.	Julianne Lynn Umali	412.	Michelle Warner	421.	Cindy Wood
404.	Teri Unsworth	413.	Vernell Washington	422.	Lisa Woodcock
405.	Lynda Valdez	414.	Kate Weida	423.	Leah Wotipka
406.	John Vanrisseghem	415.	Leah Weimer	424.	Kathy Duncan Young
407.	Allyson Victory	416.	Diane White	425.	Bonnie Younker
408.	Marina Voris	417.	Randi Willett	426.	Anna Zaluzhny
409.	Graeme Wagner	418.	Dena Wilson	427.	Julie Zieman
410.	Carol Walker	419.	Johanna Winkler	428.	Patricia Zopfi
411.	Lauri Walters	420.	Terri Winslow	429.	Christina Zrizri

Appendix C

Plaintiffs for whom all disclosed treating physicians are subject to Lands' End's Motion to Exclude.

- | | | |
|-----------------------|------------------------------------|-------------------------|
| 1. Julie Abate | 28. Gregory Guinn | 55. Jacqueline Parsons |
| 2. Kimberly Abbey | 29. Stephanie Guna | 56. Susan Pence |
| 3. Alexandria Allen | 30. Karen Hallagan | 57. Francisca Perez |
| 4. Barbara Alves | 31. Cheri Hodges | 58. Joanne Pergola |
| 5. Corlis Armmer | 32. Tzu Ming Hu | 59. Andrea Power |
| 6. Debra Baretta | 33. Julie Huismann | 60. Julia Raymond-Green |
| 7. Kimberly Barrera | 34. Beth Ann Johnson | 61. Deborah Roeber |
| 8. Angela Barthelemy | 35. Benita Johnson | 62. Keri Rojas |
| 9. Sabrina Biggers | 36. Jackie Kane | 63. Tammy Rustad |
| 10. Erika Bowman | 37. Brenda Kern | 64. Nagisa Saudargas |
| 11. Christine Brabeck | 38. Cindy Kha | 65. Cynthia Sedustine |
| 12. Madolyn Brand | 39. Jill Kruppa | 66. Tiffany Shelton |
| 13. Eileen Brennan | 40. Elizabeth Leonardo | 67. Angela Smith |
| 14. Kayla Buono | 41. Carissa Lizotte | 68. Jill Strieter |
| 15. Amanda Calvert | 42. Toni Lockhart | 69. Chase Todd |
| 16. Laurette Carns | 43. Elizabeth Marzullo | 70. Kristin Tompkins |
| 17. Tiffany Challis | 44. Demitrios Mavrogiorgos-Spencer | 71. Tina Tucker |
| 18. Autumn Coleman | 45. Dawn McDonnell | 72. Tirana Vaknin |
| 19. Dredrick Cox | 46. Victoria McGarrity | 73. Caroline Vangrieken |
| 20. Sonja Davis | 47. Lisa Miller | 74. Malin Vejfors |
| 21. Diane Del-Barrio | 48. Sharon Moore | 75. Janice Waitt |
| 22. Kay Dennis | 49. Vonda Morgan (Thomas) | 76. Lisa Walker |
| 23. Carra D'nan Dean | 50. Patrick Morse | 77. Wende Walker |
| 24. Samantha Doherty | 51. Kathleen Nelson | 78. Linda Wright |
| 25. Twila Fultz | 52. Susan Newland | 79. Amy Yon |
| 26. Shannon Gray | 53. Cintia Pace | |
| 27. Reiauh Gregory | 54. Gina Page-Nelson | |

Appendix D

Plaintiffs who were not included in Plaintiffs' Rule 26(a)(2)(B) reports and who did not make Rule 26(a)(2)(C) disclosures:

- | | | |
|------------------------------|------------------------|-----------------------------|
| 1. Alina Adams | 41. Bryce Craps | 81. Debra Hadler |
| 2. Kathy Adams | 42. Linda Creech | 82. Christa Haeffner |
| 3. Cynthia Allen | 43. Elaine Davis | 83. Molly Hair |
| 4. Eeva Alminar | 44. Toynal Davis | 84. Dorothy Hale |
| 5. Ashley Alvarado | 45. Anne Dealy | 85. Claudette Handke |
| 6. Kyoungmi An | 46. Jennifer Delapenha | 86. Victoria Hannigan |
| 7. Marcella Anderson | 47. Henry Devega | 87. Darla Hansen |
| 8. Tracey Anderson | 48. Nagelah Dieu | 88. Samra Harminder |
| 9. Patricia Anthony | 49. Michelle Disangro | 89. Kelli Harris |
| 10. Lyn Augustin | 50. Margaret Dolezal | 90. Kelly Harris |
| 11. Nina Aviles | 51. Nancy Dorman | 91. Kelli Heist |
| 12. Denise (Debra) Barnes | 52. De Vere Von Dross | 92. Laura Henning |
| 13. Lynda Barnett (Martin) | 53. Louise Duhamel | 93. Susan Hensley |
| 14. Javier Bazanstone | 54. Molly Dunn | 94. William Herrera |
| 15. John Beckstrand | 55. Brent Eglad | 95. Lisa Hogan |
| 16. Linda Bell | 56. Cheryle Erick | 96. Judy Hollingsworth |
| 17. Jean Bever | 57. Jessica Espinosa | 97. Kari Housholder |
| 18. Kathlyn Bez | 58. Lawrence Farrer | 98. Jeannie Howell |
| 19. Sharon Bishop | 59. Eva Farris | 99. Stephanie Hunt |
| 20. James Blevins | 60. Leslie Faulk | 100. Laura Jackson |
| 21. Mary Boerma | 61. Kimberly Fitch | 101. Shannon Johnsen |
| 22. Karen Bowers | 62. Kathryn Flynn | 102. De Jur Veronique Jones |
| 23. Monica Brewer | 63. Judith Franzen | 103. Christopher Joyce |
| 24. Denise Bryson | 64. Belissa Fuentes | 104. Kenneth Kaminski |
| 25. Faye Butler | 65. Myra Fuji | 105. Judie Kirkland |
| 26. Antonietta Caldarella | 66. Deborah Gaddy | 106. Leah Kitts |
| 27. Kathy Campbell | 67. Denise Garcia | 107. Alan Knapp |
| 28. Maryellen Caner | 68. Norma Garcia | 108. Kristen Kowalczyk |
| 29. Janet Carpentieri | 69. Judy Garrett | 109. Suprena Kretchman |
| 30. Deborah Carter | 70. Bailey Garrison | 110. Tsipora Kuba |
| 31. Denise Chavez | 71. Sarah Gerard | 111. Corinne Kubal |
| 32. Joseph Chiacchio | 72. Blair Glover | 112. Deborah Kuhn |
| 33. Deborah Christensen-Dahl | 73. Mari Godbolt | 113. Laura Lackten |
| 34. Breonte Clark | 74. John Gold | 114. Vernon Lacorte |
| 35. Katherine Comerford | 75. Linda Goleski | 115. Lisa Lamkins |
| 36. Geralee Corona | 76. Maryjo Gondek | 116. Maria Laygo |
| 37. Denise Corsello | 77. Trena Grady | 117. Sylvia Lazard |
| 38. Michael Cortis | 78. Jamie Grant | 118. Beth Lepor-Friberg |
| 39. Kathleen Cotnoir | 79. Misha Greer | 119. Pamela Leslie |
| 40. Susan Couvillion | 80. Carmen Griffith | 120. Ann Marie Liberatore |

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|-----------------------------|----------------------------|------------------------------|
| 121. Geraldine Lindseth | 167. Laurie Peterson | 213. Delik (Dilek) Tas |
| 122. Kimberly Locksley | 168. Tina Peterson-Fong | 214. Susan Tate |
| 123. Diane Lundstrom | 169. Nancy Petrone | 215. Laurie Tesch |
| 124. Jose Maldonado | 170. Yanick Picault-Cadet | 216. Holly Thompson |
| 125. Deb Marty | 171. Gina Pickett | 217. Jason Thompson |
| 126. Eman Marzouq | 172. Beatrice Pinon | 218. Susan Thompson |
| 127. Hasan Mason | 173. Tina Pipkin | 219. Kimberly Tobin |
| 128. Michael Mathews | 174. Mario Porterfield | 220. Linda Tomson |
| 129. Sarah Mathieu | 175. Shana Provost | 221. Hope Tucker |
| 130. Lorna McCalla | 176. Jacqueline Quigley | 222. Lisa Uddin-Barneswright |
| 131. Michelle McCarron | 177. Antoinette Qvistorff | 223. Teri Unsworth |
| 132. Margaret McDonald | 178. Laquail Ramos | 224. Marina Voris |
| 133. Kaitlyn McIntosh | 179. Mary Reed | 225. Carol Walker |
| 134. Cheryl McKay | 180. Lois Reinke | 226. Lauri Walters |
| 135. Elizabeth McKenzie | 181. Stephanie Rhynes | 227. Diane White |
| 136. Deborah McNulty | 182. Kimberly Richa | 228. Dena Wilson |
| 137. George Mctigue | 183. Leicha Richardson | 229. Johanna Winkler |
| 138. Carmen Meader | 184. Margareta Rohlik | 230. Terri Winslow |
| 139. Lynn Miller | 185. Shamil Rojas | 231. Cindy Wood |
| 140. Joan Tormey Milton | 186. Danielle Sanders | 232. Lisa Woodcock |
| 141. Nicole Misurelli | 187. Monica Santamaria | 233. Leah Wotipka |
| 142. Richard Mogan | 188. Lisa Satterfield | 234. Kathy Duncan Young |
| 143. Leyda Molina | 189. Meghan Schaefer | 235. Patricia Zopfi |
| 144. Diane Montgomery-Brock | 190. Philip Schiefer | 236. Christina Zrizri |
| 145. Bromley Moore | 191. Kristine Schmidt | |
| 146. Daisy Morgan | 192. Brandis Scoggins | |
| 147. Melinda Motor | 193. Aimee Seehausen | |
| 148. Adilah Muhammad | 194. Lisa Seibert | |
| 149. Rebecca Mulligan | 195. Kristen Shaker | |
| 150. Rosemary Munzenmayer | 196. Alethea Sheppard | |
| 151. Bonnie Muro | 197. Michelle Sherack | |
| 152. Janet Murphree | 198. Amber Smith | |
| 153. Wanda Murray | 199. Karen Spease | |
| 154. Yumiko Nakagami | 200. Carolyn Spiller | |
| 155. Kimloan Nardo | 201. Angie Spradling | |
| 156. Janet Nelson | 202. Staci Spurlock | |
| 157. Deanne Nichelson | 203. Debra Stanley-Stewart | |
| 158. Charlene Noah | 204. D'Ericka Stevenson | |
| 159. Hannah Odafe | 205. Suzanne Stewart | |
| 160. Muhammed Okedeyi | 206. Colette Stickley | |
| 161. Mary Padau | 207. Karen Stokes | |
| 162. Kayla Parnell | 208. Nikki Stone | |
| 163. Angela Patterson | 209. Patricia Sutherland | |
| 164. Jeanette Pedroni | 210. Rebecca Sydeski | |
| 165. Karina Perez | 211. Colleen Sylves | |
| 166. Virginia Perez | 212. Randa Talley | |